

Where have we come from, and where are we going? In this day and age for China, I am always reminding myself to maintain this sense of history.

– Xi Jinping

From Xi's speech when meeting with foreign attendees of the Second Understanding China Conference in Beijing, *People's Daily*, January 5, 2016

UNDERSTANDING CHINA

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RULE OF LAW IN CHINA

By Zhuo Zeyuan

First Edition 2018

PREFACE TO THE “UNDERSTANDING CHINA” SERIES

Zheng Bijian

This series of books covers the topic: Understanding China.

But why is “Understanding China” an important question?

At present, the world around us is going through unprecedented changes and nowhere more so is that the case than in China.

Since the founding of the People’s Republic of China in the mid-20th century, and particularly over the past 40 years, a poor and backward country in East Asia with a population of over 1.3 billion has achieved incredible growth to become the world’s second largest economy.

It is therefore natural that people should ask: What exactly is going on in China, and what is the secret behind such rapid development?

It is also entirely natural for people to wonder: How can a rising China get along with the rest of the world?

As a result, misgivings about the country abound. All kinds of theories such as the “China threat”, the “Collapsing of China”, the “Thucydides’s Trap” and the “middle income trap” have been directed toward China.

There is no doubt that China should unflinchingly follow its own path and deal with its own matters well. That in itself means that in order to respond to people’s concerns, questions and misgivings, one thing must be done – Understand China.

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It was precisely for this reason that the China Institute for Innovation & Development Strategy (CIIDS), which I co-founded, joined together with the Chinese People's Institute of Foreign Affairs (CPIFA) and the world-renowned 21st Century Council think tank to hold two Understanding China conferences in November 2013 and 2015.

These two important international meetings received the close attention and support of the General Secretary of the CPC Central Committee and President of China, Xi Jinping, who personally attended and held informal discussions with distinguished overseas participants; and Premier of the State Council Li Keqiang and Vice Premier Zhang Gaoli, who gave the opening speeches at the first and second conferences respectively. Top leaders of departments in the Central Committee of the CPC and State Council also participated alongside senior political figures, experts and scholars from all over the world to undertake face-to-face meetings and answer questions.

The main lesson from the conferences was that confronting questions head-on, being sincere, seeking the truth from facts, and telling the stories of China, the CPC and China's relations with the world, in lively and detailed ways, greatly helps those who care about China to gain new knowledge, and gradually allays the misgivings of those who are uncertain about China.

To achieve this goal we are moving the "Understanding China" international conference to books, videos and online, in order to respond to people's concerns, questions and misgivings on a bigger scale and in more lively forms.

This series has not only received the enthusiastic support of relevant government departments, China International Publishing Group and the Foreign Languages Press, but also the full backing of experienced practitioners, experts and scholars, as well as government leaders.

This is the first set of books in the series. Whilst these are concerned

mainly with the works of Chinese writers, future books will also feature writers from other countries.

This is also not simply a collection of books – it will be accompanied by television specials and online videos for people to enjoy.

In our opinion, "Understanding China", including "Understanding the CPC" and "Understanding China's Relations with the World" are all grand undertakings.

Let us passionately follow and participate in these undertakings together.

March 2018

CONTENTS

Preface

Part I Difficult Start / 1

Chapter 1. Prelude and Resonance of History / 3

**Chapter 2. From “Competition of a Hundred Schools” to
“Supremacy of Confucianism” / 6**

Chapter 3. Reflection and Rebirth in Tribulation / 9

Chapter 4. Shen Jiaben: Founder of Modern Law in China / 14

Chapter 5. Wu Tingfang: First Generation Jurist in Modern China / 18

Chapter 6. Kang Youwei and Liang Qichao / 21

**Chapter 7. Law Enactment in Late Qing Dynasty: Transition from Ancient
Law to Modern Law / 24**

Chapter 8. Overseas Study of Constitutional Monarchy / 27

Chapter 9. Six Codes / 32

Chapter 10. Red Jurists / 34

Chapter 11. Great Charter of the People / 40

Chapter 12. Ma Xiwu Style of Trial / 43

Chapter 13. Tokyo War Crimes Tribunal: Justice Prevails / 47

Part II Constitutional Foundation Laid / 51

Chapter 14. Determination of Legal Principles / 53

Chapter 15. Establishment of the Central People's Government / 56

Chapter 16. First Legislation of the People's Republic of China:
The Marriage Law / 60

Chapter 17. Land Reform Law and Agricultural Cooperation / 63

Chapter 18. Five Principles of Peaceful Coexistence / 68

Chapter 19. First National People's Congress / 72

Chapter 20. First Constitution of the People's Republic of China / 75

Chapter 21. Suspension of the Rule of Law / 78

Part III Renewal of the Rule of Law / 81

Chapter 22. Historic Turning Point / 83

Chapter 23. Rectification of Miscarriages of Justice / 87

Chapter 24. Restoration and Reconstruction / 93

Chapter 25. Seven Laws / 97

Chapter 26. Rescission of Party Committees' Approval of Court
Rulings / 100

Chapter 27. The Historic Trial / 104

Chapter 28. The 1982 Constitution / 109

Chapter 29. Legal Awareness Campaign / 113

Chapter 30. Legal System Study Sessions at Zhongnanhai / 115

Chapter 31. Rectifying Wrongful Convictions / 118

Chapter 32. One Country, Two Systems / 123

Part IV Fundamental Principle Established / 127

Chapter 33. Governing in Accordance with the Law / 129

Chapter 34. Villagers' Committee Elections / 133

Chapter 35. WTO Accession and Chinese Legislation / 135

Chapter 36. Transfer of Power in Accordance with the Law / 138

Chapter 37. Establishing an Emergency Support System / 142

Chapter 38. Legal Right of a Couple in Yan'an / 145

Chapter 39. Private Property Rights / 148

Chapter 40. Constitutionalizing Human Rights / 152

Chapter 41. "To Help or Not to Help" / 156

Chapter 42. The Property Law / 160

Chapter 43. House Demolition and Relocation / 165

Chapter 44. Building a Country Governed by Law / 170

Chapter 45. Tariff Sanctions / 172

Chapter 46. "My Dad Is Li Gang" / 177

Chapter 47. Establishment of Legal System / 179

Chapter 48. "Piece of S**t" Case / 181

Part V Full Implementation / 185

Chapter 49. Violence Against Japanese Brands / 187

Chapter 50. Deepen Reform in All Respects / 191

Preface

Chapter 51. Abolition of Reeducation Through Labor / 196

Chapter 52. Detention of Huang for Reeducation / 199

Chapter 53. Electoral Corruption in Hengyang / 202

Chapter 54. A Major Decision / 204

Chapter 55. Judicial Reform / 208

Chapter 56. National Constitution Day / 215

Chapter 57. Miscarriage of Justice / 218

Chapter 58. Pledging Allegiance to the Constitution / 221

Chapter 59. Hunting for Fugitives Abroad / 224

Chapter 60. Presumption of Nie's Innocence / 228

Chapter 61. Limit of Law Enforcement / 232

Chapter 62. Civil Code on the Horizon / 238

Chapter 63. Reform of the Judicial Appointment System / 241

Chapter 64. New Path for the New Era / 246

Conclusion: A Long Way to Go / 249

The rule of law has the supremacy of law as a fundamental requirement. With the development of history, the meaning of the rule of law is constantly changing. In modern times, it is generally a social management mechanism, a form of social interaction, and a state of social order featuring the supremacy of the law, with democracy as a prerequisite, market economy as a foundation, modern culture as a condition, universal observance of law as a requirement and public power-check as a key.

As an approach to governance, the rule of law is the converse of the rule of man. The fundamental distinction lies in whether it is law or power that holds supremacy. Where the law is supreme we have the rule of law; where power reigns supreme we have the rule of man. If the supremacy of law reflects democracy and guarantees freedom, equality and human rights, it is truly the rule of law in the modern sense.

The “man” in the “rule of man” refers not to any man, but to those who wield power. Therefore, the rule of man is essentially the “rule of power”. The Chinese people used to say that “if the prince breaks the law, he shall be punished as a commoner”. In fact, that is also the rule of man; as long as “the king” is exempt from the punishment of the commoner, it is not the rule of law. If the king can overturn the rule of law, the prince may escape the punishment of the commoner when he breaks the law. In that case, the rule of law cannot be established or upheld.

However, the rule of man is not to be denied in every sense. It is only appropriate that every form of state governance is adapted to the economy, politics, and culture of a particular time. Extreme tyrants and autocrats are certainly not good rulers. But there can also be benevolent, enlightened and wise rulers. In a specific era, the latter represent a good form of state governance. For example, in the era of the natural economy and agricultural society, people rarely interacted with each other. Under the rule of monarchy, imbued with the imperial, patriarchal, and family culture, there was no need for laws, far less the rule of law. However, in modern times, if we continue to promote the rule of man, it will clearly come into conflict with the trend of the times, and create a historical anomaly.

The world today is a world moving towards the rule of law. Since the bourgeois revolution, support for the rule of law has gradually developed, starting from the United Kingdom, expanding to the United States, France, Germany, Japan and so on. It has gradually become a historical trend, spreading and building up an enormous momentum. Since the end of World War II, the tide has become an unstoppable surging wave, sweeping forward. It has become an irreversible trend for mankind to evolve from barbarism to civilization, from dictatorship to democracy, and from the rule of man to the rule of law. It is the governance in accordance with the trend of the times that will promote the healthy development of society and advance the progress of social civilization.

China is an ancient civilization. According to traditional chronology, the Xia Dynasty ruled between 2070 and 1600 BC, which saw the introduction of laws. The legal system of traditional Chinese society peaked in the Tang Dynasty (618-907) and became the gold standard in the world of that era. The law continued to evolve from generation to generation, and it has seen the passage of many dynasties up to our modern times. With the establishment of capitalism and its rule of law in the

modern era, state governance has undergone profound changes. In the tide of modernization, China has established a new social system and has begun to create a new type of rule of law. Looking back at the history of the rule of law in China, one tends to admire and bemoan, to lament and excite, and the ultimate sense is one of hope.

For the Chinese nation, the rule of law is a borrowed term. It comes from the modern West and has sprouted and experienced a problematic development in China since the late Qing Dynasty (1636-1912), when the legal system was reformed. The rule of law has become one important aspect and achievement of China's modernization. With the founding of the People's Republic of China in 1949, the rule of law in China entered a new historical stage. After a brief period of development in the 1950s, the rule of law in China was disrupted by the Anti-Rightist Campaign (1957-1959), followed by the Cultural Revolution (1966-1976). The rule of law in the new republic, still in its infancy, was almost destroyed. In December 1978, the Third Plenary Session of the 11th Central Committee of the Communist Party of China (CPC) was convened. The meeting called on the Party and state "to develop socialist democracy and improve the socialist legal system", and suggested that "there shall be laws to abide by, everyone should abide by the law, the law must be enforced strictly, and those who violate the law must be dealt with." From then on, China's democracy and the rule of law embarked on a new journey.

At the 15th CPC National Congress in 1997, it was stated that the governance of China should be based on law to build the country into a socialist country of the rule of law. In 1999, "the building of a socialist country based on the rule of law" was written into the Amendment to the Constitution of the People's Republic of China, and confirmed as a constitutional provision. The 16th CPC National Congress in 2002 stated that it is essential to promote the law-based governance of the country. At the 17th CPC National Congress in 2007, the CPC Central Commit-

tee stressed the need to fully implement the fundamental strategy of law-based governance. At the 18th CPC National Congress in 2012, the CPC Central Committee emphasized that greater weight should be placed on ensuring the rule of law. In 2014, the Fourth Plenary Session of the 18th CPC Central Committee was convened with the theme of comprehensively promoting the rule of law. The plenum adopted the Resolution of the CPC Central Committee on Certain Major Issues Concerning Comprehensively Advancing the Law-Based Governance of China. It was the first time for the CPC to convene a plenary session to discuss the rule of law. It was also the first time for it to make a special decision on strengthening the rule of law. It was a new step forward in China's rule of law.

The rule of law in China has followed its own historical logic, with twists and turns, and successes and setbacks. It is a journey with no end. The Chinese nation will continue to proceed forward on the road of the rule of law forever.

The path to the rule of law in China is a long road. Looking back and forward along this road invites a lot of emotion. Perhaps citations on “road” from the two great poets of ancient China can serve as the introduction and leitmotif of the book.

Li Bai, poet of the Tang Dynasty, lamented in *The Hard Road*:

Hard is the road, hard is the road.
Don't go astray! Whither today?
A time will come to ride the wind and cleave the waves;
I'll set my cloud-like sail to cross the sea which raves.

Qu Yuan (c. 340-278 BC), a poet and politician of the Kingdom of Chu in the Warring States period (475-221 BC), had long before Li Bai told people in his *Li Sao* (The Lament): “The road ahead is long, and our climb is steep.”

Part I

Difficult Start

The development of the law in China dates back a long way. From the legendary times of clans and tribes, China experienced the rise and fall of the Xia, Shang and Zhou dynasties all the way down to the Republic of China. During that long period, China has accumulated a rich and remarkable culture of law. The ancient civilization of the legal system is the precious wealth of this nation, and also constitutes a cultural foundation and unique resources that cannot be ignored in building the rule of law. Conversely, it has also become a heavy burden that the rule of law cannot cast off. It is hard to move forward with a burden on our shoulders. However, one cannot always choose which historical factors to select or abandon. There are parts of a whole system built over time. Tradition, like some genetic element, will remain in people's bodies and perform its role at any time. It will also pass on down to children and grandchildren through kinship, affecting generation after generation. Therefore, there is no denying that China's ancient civilization of law is the historic foundation and a factor influencing the development of the rule of law in contemporary China. Understanding this process is the cognitive and cultural preparation for understanding modern China and embarking on the road of the rule of law.

Chapter 1. Prelude and Resonance of History

In the east of the world and the north of Asia, there lies a magical and ancient country called China. The industrious and kind people have worked and harvested in this beautiful land from generation to generation. From late 2200 BC to early 2100 BC, the first dynasty was established – the Xia Dynasty (2070 BC-1600 BC). From the Xia, to the Shang (1600 BC-1046 BC), and the Zhou (1046 BC-256 BC), to the Spring and Autumn period (770 BC-476 BC), dynasties rose and fell. The Chinese society entered an important period of reform and transformation: from ancient society to traditional society.

On September 28, 551 BC, a great man was born into this magical land. His name was Confucius.

Confucius' surname was Kong, his given name Qiu, and his capping name Zhongni. Even in his youth, he demonstrated unusual intelligence. He grew to be a tall, muscular, and knowledgeable man proficient in music, riding, archery, chess, calligraphy and painting. Confucius authored or edited the ancient Chinese classics including *The Book of Songs*, *The Book of History*, *The Book of Rites*, and *The Book of Music*, and revised the historical work *Spring and Autumn Annals*. He also actively advocated education and opened schools for his disciples, known in history as “teaching at the almond altar”. With the earth as his schoolhouse and society as his classroom, he led his students to travel around various states while teaching, which could be considered the largest campus in human history. Confucius had made a great contribution to Chinese culture and exerted a profound influence. The Confucius Institutes that have been set up around the world today are named after him.

Confucius also contributed to the development of law. He taught his

students and advised the world how to deal with the relations between ethics, culture and law, so that law could give full play to its role under the guidance of ethics and culture. Many of his discourses and conversations with his students were compiled by his students into a world-renowned masterpiece, *The Analects*. A large number of the quotations have become classics and been passed down through the ages. “When proprieties and music do not flourish, punishments will not be properly awarded. When punishments are not properly awarded, the people do not know how to move hand or foot.” “If the people are led by laws, and uniformity sought to be given them by punishments, they will try to avoid the punishment, and have no sense of shame. If they are led by virtue, and uniformity sought to be given them by the rules of propriety, they will have a sense of shame, and moreover will become good.” There is a saying that “if one learns half of *The Analects* by heart, he could make a ruler of a country”. “In hearing litigation, I am like any other. What is necessary, however, is to cause people to have no litigation.” “No litigation” is what he set as the ultimate goal of litigation and even the goal of law. These ideas and philosophies are quite progressive even in modern times.

There is a story in *Lü's Spring and Autumn Annals*, which illustrates Confucius' view on the relationship between ethics and law. It is noted that during the Spring and Autumn Period, the State of Lu enacted a law that if the Lu people saw their countrymen being sold as slaves in other states, as long as they were willing to pay for their redemption, the state would compensate and reward the rescuers upon their return. This law was in place for many years, and many Lu people who had been enslaved in other states were saved and returned to their home state.

Confucius had a student in business called Zigong, who was very wealthy. He redeemed many of his countrymen from other states, but did not apply for the compensation from the state. He thought he did not need the money, and he was willing to serve the Lu people who had

been enslaved in other states as a contribution to his state. When Confucius was informed of that, he became annoyed with Zigong and criticized him bitterly. In Confucius' opinion, Zigong earned himself fame with his action, but he raised the social standard of “righteousness” at the same time. In the future, those who would go to the state for compensation might not be endorsed by the public any more, and they might be subject to public ridicule. They might even be expected to behave like Zigong, helping others without asking for compensation as a contribution to the state. As a result, many people would turn a blind eye to their countrymen enslaved in other states. Those in need of assistance in other states would not be able to return to their native land. That way, the enslaved Lu people in other states would remain in harm's way.

Confucius' ideas were very insightful. He handled the relationships between ethics, law and society very well. It is fair to say that he was a man of true wisdom.

Confucius died on April 11, 479 BC. A decade later, another great philosopher, Socrates, was born in ancient Greece. Many of his ideas and his philosophy about law were not known to future generations. However, he questioned the collective notion of “might makes right” and attempted to improve the Athenians' sense of justice, which led to his unfair judgment and execution. The concept of law and values that he demonstrated has always been admired by future generations.

The two philosophers appeared in the East and the West around the same period. They both set up lecterns to teach and educate the general public. Both of them lived into their 70s, which was quite unusual at that time. Their indelible contributions to world culture were a great gift from heaven. Their understanding of law shines brightly in the sky of history.

Chapter 2. From “Competition of a Hundred Schools” to “Supremacy of Confucianism”

After Confucius, China continued to develop. Various ideas and methods of state governance emerged. The Legalism of the Spring and Autumn Period and the Warring States Period was a major school of thought. Legalism was an ancient school emphasizing the rule of law. It originated from the Xia and Shang dynasties and thrived in the Spring and Autumn Period and the Warring States Period along with “the Competition of a Hundred Schools”. The learning to which the legal philosophers attached great importance was also called the philosophy of the legal school. Representatives of the school include Guan Zhong, Zi Chan, Li Kui, Wu Qi, Shang Yang, Shen Dao, Shen Buhai and so on. Han Fei, who lived during the late Warring States Period, summed up their discourses into the philosophy of the legal school, which involved politics, law, economy, culture, and management. Shang Yang (c. 390-338 BC), a statesman, thinker and major representative of the school of thought, applied it to the governance of the State of Qin, and introduced reform to make Qin a strong state, which eventually conquered and unified all six states into a strong empire. That is one of the reasons for the school of thought to remain highly influential in China for thousands of years till today.

Because of the competition of the various schools of thought, Confucianism and Confucius did not hold a very high standing during the Spring and Autumn period, the Warring States period and the Qin Dynasty (221 BC-206 BC). In the Han Dynasty (206 BC-AD 220), after Emperor Wu of Han pressed for Confucianism as the main state ideology, Confucianism and Confucius gradually returned to favor, thus

becoming the mainstream political culture of the Chinese society. The Confucian idea of “governing with the rules of propriety” became the basic strategy of governance.

After the Northern Song Dynasty (960-1127), northern China was occupied by the Jin people for the Jin Dynasty, while the Southern Song Dynasty (1127-1279) was established in southern China in 1127. At that time, China was in a state of division, but its society remained stable for a fairly long period of time. The Chinese population reached a new high. According to statistics, its population was 46.7 million in 1110. By 1223, the 16th year of the reign of Emperor Ningzong, the population had increased by 30 million to 76.8 million. This was when the Southern Song poet Xin Qiji wrote the famous poem “Village – in the rhyme of Qing-ping”:

“The eaves are low and the stream is green.

The Wu dialect sounds intoxicating – who is the old woman with white hair?

The elder son is hoeing by the stream, and the second is crafting a chicken coop.

The youngest son is my favorite, peeling lotus by the stream.”

This poem depicts a picturesque scene of rural life. In a family and society like this, it was politically sufficient to have a great and distant monarch and a few loyal officials to assist him. In a regional context, what was more important for a happy family was a capable husband and a virtuous wife, a stern father and filial children, and a few loving brothers and sisters. People would work from sunrise to sunset, contracts and lawsuits being far from their thoughts. If there should be disputes, the rural traditions and family ethics would resolve almost everything. There was no such need for law at all, nor the rule of law.

The rule of man, or rather the rule of propriety or virtue in traditional Chinese society, provided the best strategy for governing a feudal society that lasted for more than 2,000 years. The Confucian culture and its concept of governance of virtue adapted to the needs of the agrarian society and the natural economy, the needs of the monarchy and family ethics. The Chinese society thus made progress in the light of Confucian culture.

However, the Confucian culture gradually exposed its serious problems as society made progress. It was after all not a product of modern industrial society, without the capability to satisfy the needs of a market economy and democracy. In the course of modernization, the rule of propriety or virtue, however glorious it might have been, was clearly outdated. A monarch, however outstanding he might be as an individual, might bring disaster to his country and nation without democracy as the foundation of his rule, especially when he considered himself the sacred ruler and savior of the world.

In a certain sense, the prosperity of society is a testament to the success of state governance, while it also exposes the conservative and backward nature of traditional ways of governing, which must change. The rule of virtue created the best conditions for the development of Chinese society, and dug its own grave at the same time. The traditional rule of virtue no longer met the needs of society. The rule of virtue was a beauty of a particular era in a historical sense. In the face of modernization, it no longer meets the requirements of social development. From this perspective, it will inevitably decline and be replaced by the more advanced rule of law.

Chapter 3. Reflection and Rebirth in Tribulation

In the middle and late Ming Dynasty (1368-1644), tremendous changes took place in China, when signs of capitalism gradually emerged. The commodity economy witnessed unprecedented development, especially in the booming handicraft industry where products became more and more abundant, and several large industrial and commercial cities emerged. In Suzhou, employment appeared in a form in which “machine owners contribute capital while machine workers contribute their strength”. Some workshops developed into independent handicraft factories. The wealthy owners were in fact the same as the capitalists later, employing others as workers. The workers were paid by working day as employees. The growing capitalism called for a new legal system, which did not come into being in China. In the 18th century, Scottish economist Adam Smith studied the history of China in that period and concluded that although China had always been the richest country in the world, with the most fertile land, the most meticulous farming, the largest population, and the most diligent people, it seemed to be standing still for a long time. Travelers’ latest reports on China’s farming, diligence and population density bore little difference from that of Marco Polo, who visited the country 500 years before. It might be long before Marco Polo’s time that China’s wealth should have fully developed to the extent allowed by the country’s legal system.

If China had in the Ming Dynasty opened its door to capitalism and built new institutions and systems, China would have started to walk ahead of the times and led the world. But there is no hypothesis in history. China did not change its system, slipping behind the tide of history. The Manchu ethnic group, which used to inhabit northern China, es-

established the rule of the Qing Dynasty. Still, the Chinese society did not convert to capitalism. The traditional agrarian society went on day after day, until the gradual decline of the Qing Dynasty.

In the meantime, capitalist countries such as Britain, France and the United States were developing rapidly.

The United Kingdom went through the emerging industrial revolution that began in the 1760s. By the 1830s and 40s, large-scale machine industry gradually replaced handicraft industry. Capitalism continued to gain strength. With the sharp increase of industrial output, Britain was eager to find new resources and markets.

France, a capitalist country second only to the United Kingdom, had the second largest industrial output in the world around 1840.

At the same time, the United States, as an emerging economy, was also evolving and displaying fresh vitality.

In Russia, after the Emancipation Reform of 1861, capitalist industry and commerce developed rapidly.

China, affluent in economy but backward in institutions, was naturally coveted by Western powers.

At some point, British merchants began to smuggle opium on the coast of Guangdong, and this trade became increasingly rampant.

In 1838, Emperor Daoguang of the Qing Dynasty appointed Lin Zexu – the Governor of Huguang, as Imperial Commissioner, and sent him to Guangdong to eradicate the opium trade. On his arrival, Lin challenged British arrogance by seizing more than 20,000 cases of opium from British merchants at Humen Port and destroying them. This incident provided the pretext for the British government to send an expeditionary force to China.

In June 1840, George Elliot, Admiral of the British Navy and Charles Elliot, Chief Superintendent of British Trade in China, led 47 British Naval warships and 4,000 Army troops to the Pearl River in

Guangdong and imposed a blockade on the nearshore waters. In August, the British fleet arrived outside Tianjin port. On August 20th, Emperor Daoguang was forced under duress to approve and sign a letter to the British, allowing trade and punishing Lin Zexu for the British fleet to withdraw to Guangzhou. The Emperor also sent his minister Qishan there to negotiate.

In October, Qishan was appointed as Governor of Guangdong and Guangxi. The war party led by Lin Zexu were dismissed. Later, Lin was banished to Xinjiang.

On January 7, 1841, the British forces suddenly captured the Dajiao and Shajiao Forts at the entrance of the Humen Strait. More than 700 Qing troops were killed or wounded, and 11 troopers and tugboats were destroyed. Qishan signed a tentative agreement – the Convention of Chuenpi with Charles Elliot, in which Hong Kong would be ceded to the United Kingdom. After that, the British forces occupied Hong Kong. Fortunately, Qishan did not use the official seal, and the tentative agreement was never approved by the emperor, which resulted in a convention that was not legally binding.

That was the First Opium War, which marked the beginning of China's modern history and the start of a tortuous national struggle.

On August 29, 1842, the Treaty of Nanking, also known as the Treaty of Jiangning, was signed by Qing representatives Qiying and Yilibu, and UK representative Henry Pottinger on board HMS Cornwallis, the flagship of the British forces. That was the first of the unequal treaties in China's modern history. It compromised the integrity of China's sovereignty, and dragged China into the capitalist world market, gradually reducing it to a semi-feudal and semi-colonial society.

One of the original copies of the treaty is kept by the British government, and the other one is kept in the National Palace Museum in Taipei. The Treaty of Nanking has a total of 13 articles, announcing the

end of the Sino-British war and the start of peace. The Chinese government would open five “treaty ports” – Guangzhou, Xiamen, Fuzhou, Ningbo and Shanghai. Britain was allowed to send resident consuls to the treaty ports and British merchants and their families were allowed to communicate with the local people freely. The Qing government would pay 21 million silver dollars to the UK, including 6 million for compensation of the burned opium, 12 million for British military expenses, and 3 million for compensation of merchants’ debts. The total sum was to be paid in installments over four years and the Qing government would be charged an annual interest of 5 percent for the money that was not paid in a timely manner. At the same time, Hong Kong was ceded to the United Kingdom.

After the Opium War, Western powers plundered almost 1.9 billion silver dollars through the Treaties of Nanking, Tianjin, Peking, Ili, and Shimonoseki, the Boxer Protocol, and the Treaties of Lhasa and Yantai. That sum was 16 times the total revenue of the Qing government in 1901, and 82 times the total industrial and mining capital of the whole country.

The huge war reparations overwhelmed the Chinese government. In 1842, the payment was 4.3 million silver dollars, accounting for 11 percent of the annual gross income. In 1843, the payment was 3.5 million silver dollars, accounting for 11.3 percent of the annual gross income. In 1844, the payment was 3.5 million, accounting for 9.2 percent of the annual gross income.

The Opium War gradually reduced China to a semi-colonial and semi-feudal society, losing its independence in the world, and leading to the disintegration of the natural economy in the country.

In the face of this tragic situation, China’s patriotic elites made great efforts to change the situation. They had to reflect on the traditional methods of governance, including the rule of virtue, which was a beauty

in people’s minds.

The first thing they thought of was to save the nation by engaging in industry. The Self-Strengthening Movement was launched.

In 1865, the Jiangnan Machine Works (Jiangnan Shipyard) began to translate Western books. By the 1890s, about 13,000 translated books had been sold. The industrialists were not theorists or thinkers. They were not in a position to spearhead and spread culture and ideas. However, they saw national rejuvenation and strength as their duty. Their devotion and selfless contribution deeply moved future generations.

Under the influence of Western thoughts, Kang Youwei and Liang Qichao masterminded the Hundred Days’ Reform – a political, cultural, and educational reform movement that played an important role in promoting the progress of Chinese society. From 1880 to 1940, 2,204 Japanese books were translated into Chinese, half of which were works of social sciences, including a number of Western works on law. Yan Fu translated *De l’esprit des lois* (The Spirit of the Laws) by French thinker and jurist Montesquieu, and *On Liberty* by English philosopher John Stuart Mill. Kang Youwei and Liang Qichao were theorists and revolutionaries. Yan Fu was a thinker and translator. Shen Jiaben was a jurist and law practitioner. They were all pioneers who introduced Western legal culture into China.

The rise of the emerging industrial economy and the new demands of the ideology influenced by the West called for China’s renewal. In response, history gave China a large number of visionary pioneers who are worthy of admiration and respect, for example, Shen Jiaben, Wu Tingfang, and Sun Yat-sen.

Chapter 4. Shen Jiaben: Founder of Modern Law in China

In 1840, when the Opium War broke out, a baby was born to the Shen family of Wuxing County in Zhejiang Province. The baby was Shen Jiaben, whose courtesy name was Zichun and alias was Jiyi. His father, Shen Bingying, was a scholar who had succeeded in the highest imperial examinations as a *Jinshi* in the imperial examinations and served as a director at the Ministry of Justice and the prefect of Anshun, Guizhou.

In his youth, Shen Jiaben lived and studied with his father, who was then working in Peking. He was talented, intelligent and hard-working. In the first year of Emperor Tongzhi (1862) in the Qing Dynasty, he succeeded in the imperial examinations at the provincial level as a *Juren*. In 1883, he became a *Jinshi*. He was highly respected by Pan Wenqin, Minister of Justice, and served as the Prefect in Zhili (now Beijing and the surrounding regions) and Shaanxi provinces. Later, he worked as the Prefect in Fengtian (now Liaoning) Province and the concurrent Auditor and Assistant Chief of the Law Office. He was later promoted to higher positions. In 1886, he published his first law book, *Ci Zi Ji* (Tattoo as a Penalty), which examined the origins of the ancient Chinese criminal penalty system and discussed its strengths and weaknesses. It was of great value for the study of the Chinese criminal penalty system and its evolution. The renowned law expert and the Vice Minister of Justice, Xue Yunsheng, prefaced this book with great praise. Later, Shen Jiaben authored and edited more law books, including *Ya Xian Bian* (Collection of Legal Cases), *Lü Li Za Shuo* (Legal Cases Study) and *Xing Fa Za Kao* (Criminal Law Study).

Shen Jiaben hated the extraterritorial rights enjoyed by Western pow-

ers. He had always in his mind reforming the legal system and fighting for national sovereignty. After 1900, when renewing the trade agreements with China, the United Kingdom, Japan, the United States, and Portugal indicated that if China's laws could be reformed in tune with the West, they could abandon their consular jurisdiction in China. Therefore, the Qing government instructed Yuan Shikai, Liu Kunyi, and Zhang Zhi-dong to recommend scholars "familiar with Chinese and Western laws" to revise the Qing Code, so that it would be consistent with the laws of other countries. It was against this backdrop that Shen was appointed as the Secretary of Enactment. Since 1901, he served as the Vice Minister of Justice, Secretary of Enactment, and concurrent Vice Minister of Law and Minister of Justice. On May 15, 1904, the Enactment Office was officially open. The office was mainly responsible for translating and studying the laws of various countries, and compiling Chinese legal works. Subsequently, a large number of foreign laws and regulations were translated into Chinese as a reference for the revision of the Qing Code. He introduced an unprecedented number of laws and legal works into China, which made it possible to compare the legal systems with other countries and paved the way for reforming the old code of China and enacting a new one. In order to complete the translation, Shen conducted extensive research and analysis, identifying the meaning of texts and terms. His efforts played an important role in the birth of modern Chinese law. Since the Qing Dynasty rulers and most of the bureaucrats knew little about law, he requested the Qing throne to set up a law school to train new legal talents. Shen was subsequently appointed as the dean of the Imperial Law College. In 1906, China's first imperial law school officially opened. Under the guidance of a philosophy of "connecting China with the world", Shen employed Japanese law experts, such as Okada Taro, to teach at the new college. He supported Taro in his publication of *Notes on General Theory of Law*, which served as a textbook for the college. The

opening of the Imperial Law College was a pioneering step in the history of law in China, laying a good foundation for the beginning of modern legal research and education.

In 1908, work on the Qing Civil Code began. Japanese scholar Matsuo Yoshioka was in charge of drafting the chapters of general provisions, creditor's rights, and property rights. Chen Lu, who had studied in France, and Gao Zhong and Zhu Xianwen, who had studied in Japan, were in charge of drafting the chapters of relatives and inheritance. By the end of 1910, the draft Qing Civil Code was complete, with a total of 1,569 articles in the five chapters of general provisions, creditor's rights, property rights, relatives, and inheritance. In 1911, the draft entered the legislature for deliberation, when the Xinhai Revolution broke out in October, which overthrew the Qing Dynasty. As a result, the draft civil code was never formally ratified. It remained a draft for later generations to remember.

Shen Jiaben was an active advocate of the rule of law and adhered to the rule of law in the struggle between propriety and law. He stood firmly for the abolition of slavery and the ban on human trafficking. Thanks to his efforts, his ideas were finally incorporated into the revised law. That was the first time that human dignity and equality was embodied in Chinese legislation, as a masterpiece in history.

There was a legend of this law revision. Empress Dowager Cixi once convened a meeting on the key suggestions for the revision, including human dignity, domestic slavery, equality between slaves and their masters. Shen Jiaben had made the suggestions. He expected a bad result, which might cost him his life. When he left home in the morning, he told his wife that if he should not return after midday, she should prepare for his funeral. As expected, the debate on the abolition of slavery was heated, with very different ideas opposing each other. The meeting didn't come to an end until well after midday. When Shen Jiaben returned home, his

wife had already set up a mourning hall and was crying for him. There is no way to tell whether the legend is true or not, but it shows how fierce the debate on the abolition of slavery in China had been.

On February 12, 1912, with the abdication of the Qing Emperor, Shen Jiaben ended his political career. After the founding of the Republic of China, many people called on Shen to serve as the Minister of Justice and promote the development of Chinese legislation. Yuan Shikai, the provisional president of the Republic of China, had the same idea. But Shen, who had been in politics for nearly 50 years, was determined to retire. He was already over 70 years old. What he wanted most was not the continuation of his political career.

From then on, he refused to engage in politics on the grounds of illness. He was fully dedicated to writing and completed his book *Han Lü Zhi Yi* (Notes to Chinese Laws). The book achieved an unprecedented scale and depth in its research into Chinese laws.

On July 12, 1913, Shen Jiaben died in Peking at the age of 73, leaving the world grieving for the loss of a master of law.

Chapter 5. Wu Tingfang: First Generation Jurist in Modern China

Wu Tingfang was another important Minister of Law of the late Qing Dynasty. He was two years younger than Shen Jiaben. He was appointed together with Shen as the Secretary of Enactment.

Born in Singapore on July 30, 1842, he returned to China with his father and settled in Guangzhou. At the age of 13, he went alone to study at the Anglican St. Paul's College in Hong Kong and graduated with honors six years later. In 1862, he served as an interpreter in the Hong Kong Magistrate's Court. In 1874, he studied law at University College London at his own expense, and became a barrister in the UK after graduation.

In February 1877, Wu returned to Hong Kong to practice law. He was the first ethnic Chinese barrister admitted in the British colony. On December 16, 1878, he was officially appointed as the Justice of the Peace (JP), the first ethnic Chinese in that position.

On February 19, 1880, as recommended by Hong Kong Governor John Hennessy and the ethnic Chinese leaders in Hong Kong, Wu Tingfang became the first ethnic Chinese member of the Legislative Council since the establishment of Hong Kong as a commercial port. Wu supported Hennessy's enlightened policy and opposed discrimination against ethnic Chinese. He tried to abolish public whipping and demanded a ban on child trafficking. Wu made important contributions to Hong Kong's business development, urban construction and social welfare.

In 1896, Wu Tingfang served as Minister of the Qing government to the United States, Spain, and Peru. In 1902, he returned to China and obtained the rank of upper fourth (in a system of nine numbered ranks, each subdivided into upper and lower levels). He served successively as

the Secretary of Enactment, Minister of Commerce, Vice Minister of Foreign Affairs, and Vice Minister of Justice. He co-chaired the law revision with Shen Jiaben, during which he pushed for the introduction of a comprehensive Western legal system and got the support of Shen Jiaben.

In October 1911, after the Xinhai Revolution, Wu Tingfang immediately announced his support for the Republic and sent a letter to the Qing government to advise the emperor to abdicate. He participated in the peace negotiations on the revolutionaries' behalf. After his resignation from office, he returned home and wrote *The New Laws of Yanshou*, *Thoughts on State Governance of the Republic of China*, and *America, Through the Spectacles of an Oriental Diplomat*. When he learned that Yuan Shikai was being encouraged to restore the monarchy, he said in a speech:

“The existing government in Peking is only a theater. The bureaucrats of all levels are only actors. We can watch the actors, but we really cannot believe what they say.... You can ask the passers-by if there's anyone who would like an emperor. We must persist – whatever the year is named, be it Hongxian (Tr. Yuan Shikai proclaimed himself as the Hongxian Emperor in 1915), or Xianhong, our understanding is that this is the fifth year of the Republic of China, and the next year will be the sixth. We must maintain this for tens of thousands of years!”

In 1912, Sun Yat-sen was appointed as the Provisional President of the Republic of China, and the Nanking Provisional Government was established. Wu Tingfang was appointed as the Minister of Justice and continued to work on legal reform, with the strong support of Sun Yat-sen. Wu Tingfang advocated learning from the West to establish a new legal system, including a system of lawyers, and actively promoted the defense function of lawyers. Under his leadership, a series of laws and regulations were enacted.

In 1916, he served as Minister of Foreign Affairs in Duan Qirui's cabinet. The next year, he served as the Acting Premier. However, he

would soon be dismissed for refusing to sign the order to dissolve the parliament. When he came to Shanhaiguan and learned about Zhang Xun's restoration attempt, he made up his mind to completely break with the Beiyang government. He went to Guangdong to find a new way, joining Sun Yat-sen in the Constitutional Protection Movement, and served as Sun's Minister of Foreign Affairs.

In 1921, he served as Minister of Foreign Affairs and Finance of the Guangzhou Military Government. During the Northern Expedition, he was the acting president in Sun's absence. Wu Tingfang died on June 23, 1922. Sun Yat-sen, who was seeking refuge on board Yongfeng (a ship), was deeply saddened. He said this in pain:

“Minister Wu has died for me, and for us all. He lived a glorious life. Although he has withered away, we must stay committed and united as one for our nation. But I'm afraid there will be no one like him again. What all of us can do is to muster up courage and follow his footsteps to defeat all enemies. Only in this way can we as followers fulfill our mission and let him rest in peace.”

As men of law, living in that particular historical period could be deemed either as a kind of fortune or misfortune. In such a context, they dedicated their lives to the country and the people, which would be admired and respected by later generations. Having talked about Shen Jia-ben and Wu Tingfang, we'll move on to Kang Youwei and Liang Qichao. We should hail the fact that this era forged one talent after another, each of whom would rule his own domain for decades to come.

Chapter 6. Kang Youwei and Liang Qichao

When it comes to the dawn of the rule of law in China in the late Qing Dynasty, there is one name that cannot go without mention – Kang Youwei.

On a beautiful spring day in March 1858, Kang Youwei was born into an official's family in Nanhai County, Guangdong Province. He was later nicknamed Kang Nanhai after his native county. Kang was an important politician, thinker and educator in the late Qing Dynasty and a representative of what was later called bourgeois reformism. He was exposed to western culture in his youth and fell deeply under its influence.

In 1879, Kang Youwei traveled to Hong Kong at the age of 22. After dipping into western civilization, he gained an understanding that the British people “ruled the country according to law” and changed his previous stereotype that “barbarians” were not civilized. This sparked his interest in learning more about Western culture. In 1888, he went to Peking again to sit the imperial exam. He wrote to Emperor Guangxu requesting reform. Somehow, his request never reached the emperor.

In 1891, he set up a school in Guangzhou and gave lectures. Liang Qichao was one of his noted students there. In 1895, when the Treaty of Shimonoseki was signed, Kang Youwei called on more than 1,300 imperial exam candidates to write to the imperial court to express their opposition. That was known in history as the Gongche Shangshu Movement.

With the support of Kang Youwei and Liang Qichao, Emperor Guangxu issued a series of reform measures and enacted relevant laws and regulations, which, however, did not succeed due to opposition from Empress Dowager Cixi. The reform lasted for only 103 days, from June 11 to September 21, 1898. Therefore, it was known in history as the

Hundred Days' Reform.

One cannot talk about Kang Youwei without mentioning Liang Qichao. In the spring of 1890, Liang Qichao was only 18 years old when took the eighth place in the Guangdong provincial imperial exam. His classmates introduced him to Kang Youwei, who was 33 years old. Kang had not done well in the imperial exams and remained a student of the Imperial Academy. According to rules, Liang Qichao, a successful candidate in the imperial exam, enjoyed seniority over Kang, and began the encounter with a somewhat complacent attitude. But after the two had met and talked for hours, Liang was deeply impressed with Kang's knowledge and attitude. It quickly dawned on Liang that what he had learned previously was no knowledge at all, just tools for dealing with the imperial exam. Liang deeply admired Kang, and insisted on following him as his student. Therefore, Liang Qichao became one of Kang's students in his Guangzhou school and the two developed a deep bond. After the failure of the Hundred Days' Reform, Liang Qichao and Kang Youwei both fled to Japan.

In Japan, Kang Youwei had with him the so-called "secret imperial edict" of Emperor Guangxu, and continued to defend the monarchy and the Qing Dynasty. Liang Qichao joined Sun Yat-sen and other revolutionaries, committed to overthrowing the Qing Dynasty and establishing a democratic republic. That was when the teacher and student parted ways. Sometimes they even debated with and criticized each other in public.

After the Revolution of 1911, Kang Youwei advocated the restoration of the monarchy of the Qing Dynasty. He took practical actions to promote the restoration. He opposed Yuan Shikai's claim to be the Hongxian Emperor while colluding with Zhang Xun on the Qing restoration. During the 12 days of the successful restoration, he was appointed as the vice president of the Privy Council and honored with the top

official ranking.

However, in Liang Qichao's view:

"I love Confucius, but I love truth more. I love my ancestors, but I love my country more. I love my old friends, but I love freedom more."

"I dare say that since China has been declared a republic, it will never return to monarchy in the coming tens of thousands of years. Should you be as virtuous and holy as Yao and Shun, as violent as the first emperor of Qin and the first emperor of Ming, or as cunning as Cao Chao and Sima Yi, you will never be accepted as another emperor."

From a pure moral point of view, they were both reputable scholars. Late in Kang's life until his death, Liang still showed great respect for Kang as his student. From time to time, Liang had provided assistance to his teacher financially. After Kang's death, Liang joined other students in a memorial service for Kang. Liang showed respect for Kang although he didn't agree with him on many issues, which is quite touching and inspiring. It was quite normal for thinkers in that era of great change to hold divided opinions. They all had their own ideals and strove to achieve them. In the eyes of future generations, they are both worthy of respect for the efforts they had made, which made them shining stars of their times.

Chapter 7. Law Enactment in Late Qing Dynasty: Transition from Ancient Law to Modern Law

At an official legislative session in the late Qing Dynasty, an angry old man grabbed his cane and tried to beat a fellow official, who fled in panic. The old man, wielding the cane, chased him in circles around the venue. What was the issue?

It turned out that the day's session was focusing on the draft criminal law of the Qing Dynasty. There was a dispute over whether they should drop from the draft the charge of "adultery without a husband", which held that if an unmarried woman, a widow, or a nun should have sex with a man, they would be charged with a crime. The beaten official actively advocated removal of this crime, while the old man insisted that it must be retained. The old man believed that if the crime should be removed, the world would be in chaos. The traditional ethical code would be destroyed, which was something that should never happen.

After the Opium War in 1840, the Qing Dynasty came under pressure from home and abroad. In the first ten years of the 20th century, from 1902 to 1911, the Qing government made significant changes to the Chinese legal system that had been maintained for more than 2,000 years, which was known in history as the Late Qing Dynasty Enactment. It was a major transformation in the rule of law in China, which not only referred to the "laws of advanced countries" and absorbed the "common merits and latest theories of the modern world", but also insisted on "retaining the traditional ethical codes and customs passed down for thousands of years" on fundamental issues.

Major achievements were made with the Late Qing Dynasty Enactment in the following four aspects:

First, the legal system was innovated. China's traditional legal system had remained unchanged since the Qin and Han dynasties. The name of the legal system changed with the name of the dynasty, hence, the codes of the Qin, Han, Tang, Yuan, Ming and Qing dynasties. In the Late Qing Dynasty Enactment, the traditional legal system combining all laws was transformed into a modern legal system attuned to the West. The new system was dominated by the constitution, encompassing the statutes or rules of the criminal law, civil law, administrative law, commercial law and procedural law, which clearly divided the laws into substantive and procedural laws, laying an important foundation for the modernization of the rule of law in China.

Second, the old system was abolished. In the late Qing enactment, some outdated systems were abolished. Specifically, the Criminal Code of the Qing Dynasty promulgated in 1910 abolished savage torture such as *Lingchi* (slow slicing), *Xiaoshou* (beheading), and *Lianzuo* (punishment implicating all kinship of a criminal). It also replaced the five punishments of whipping, rodding, jailing, exile, and death with more civilized sanctions such as fines, jailing, exile, banishment, and death. The New Criminal Code of the Qing Dynasty promulgated in December 1910 adopted a new criminal law system, which consisted of general provisions and specific provisions. Five main types of punishment were defined: death penalty, life imprisonment, fixed-term imprisonment, criminal detention, and fine. Accessory punishments were implemented through deprivation of public rights and confiscation. The new system represented the institutional modernization of China's criminal law.

Third, a new legal system was crafted. Many new laws were promulgated in the late Qing enactment. In 1904, the Qing government issued laws and regulations covering the constitution, criminal law, civil and commercial law, litigation system and judicial system. Notably, the Qing Dynasty began drafting the civil code. In August 1911, the draft Qing

Civil Code was completed as the first draft civil code in Chinese history. It was a German and Japan-based civil code which also inherited some civil legal norms of feudal China. With the Xinhai Revolution in October 1911, the draft code remained a draft forever.

Fourth, the old judicial system was reformed. Great changes were made to the old judicial system and the litigation system. In 1906, the Qing Dynasty completed the draft Criminal and Civil Procedure Law. It followed the Western and Japanese trial systems and adopted a system of open trial, jury and lawyer. Unfortunately, the law was not promulgated because of the opposition from provincial governors. In 1909, the Qing Dynasty complied the Judicial Institutions Law in accordance with the relevant laws of Japan. It adopted the principle of judicial independence in that all courts exercise jurisdiction independent from administrative prosecutors, and procuratorates would be set at the courts of all levels. In December 1910, the Qing Dynasty completed the draft Criminal Procedure Law and Civil Procedure Law. However, due to the rapid fall of the dynasty, both were shelved before they were deliberated and enacted.

The Late Qing Dynasty Enactment served as the transition from ancient law to modern law in China's legal system, representing a historic process and an essential stage of development. It defined the pathway for the extension and renewal of ancient law in modern China, and opened a new path to the development of modern law. It was of great significance in the development of China's legal system.

Chapter 8. Overseas Study of Constitutional Monarchy

While on the verge of collapse, the Qing Dynasty constantly sought the path to its own salvation. Under the impact of the Russo-Japanese War (1904-05) and the internal crises, Chinese diplomats abroad and governors of the provinces suggested to the imperial court that constitutional monarchy should be established, following the examples of Japan and the European countries. The imperial court decided to send a delegation of high-ranking officials to Europe, the United States and Japan to study their political systems. A decision would be made after their return. That was the beginning of the overseas trip of the five high-ranking officials from 1905 to 1906.

On July 16, 1905, the emperor decreed that the purpose of the officials' overseas trip was "to pay visits to the separate destinations in the East and West, to examine their political systems, for us to follow fine examples". The officials were expected to "conduct careful consultation and observation for the adoption of future measures and live up to your duties". Before their departure, Empress Dowager Cixi and Emperor Guangxu met with the officials and attended a presentation on constitutional monarchy by Duanfang, the Governor of Hunan Province. Imperial refreshments were prepared for the officials' overseas trip. Emperor Guangxu told the Grand Councilor: "This overseas trip is a top priority that should not be delayed in any way."

On a mid-autumn morning on September 24, it was already a little chilly in the imperial capital city. The five officials and their entourage boarded a train at Zhengyangmen Railway Station near Tian'anmen (Gate of Heavenly Peace), ready to depart for their overseas trip. The officials

were Zaize, Duke of the Rank of Upper First; Xu Shichang, Grand Councilor; Shaoying, Vice Minister of Commerce; Duanfang, Governor of Hunan, and Dai Hongci, Vice Minister of Revenue. Everything was in order when suddenly there was a loud bang. A bomb exploded on the train. It was an attack by Wu Yue, a revolutionary. The explosion killed Wu Yue and injured Shao Ying and a few others on the spot. It was a troubled start. The trip was postponed.

On December 11, the bright winter sun illuminated the ancient capital. But it was winter in northern China, where the wind was biting and chilly. Zhengyangmen Railway Station was heavily guarded. Five new members of the delegation – Zaize, Dai Hongci, Duanfang, Shang Qiheng and Li Shengduo, carried out the ritual of praying to their ancestors for protection and set off for Shanghai. On December 19, Dai Hongci and Duanfang, together with dozens of their entourage, boarded Siberia – a vessel of the Pacific Mail Steamship Company and set off for Japan and the United States. On January 14, 1906, Zaize, Li Shengduo and Shang Qiheng boarded the French Steamship Company's Cleitoren, sailing to Japan and European countries.

The primary objective of this overseas study trip was constitutional monarchy. Therefore, the delegation would visit the parliaments in their host countries and study the parliamentary system. Dai Hongci and other officials were impressed with the communication between the ruling party and the opposition party for national interests and the interaction between the monarch and the parliament in the host countries. When they visited the United States, they found that the members of Congress “always argued about issues with intense emotion, with their eyes wide open and their hands expressive. But when they left the Congress after the sessions, they shook hands amicably and showed no hard feelings. Business and private relations are separated. Therefore, the heated discussions are not a problem.” In the United Kingdom, they saw that “members of

parliament were divided into the ruling party and the opposition party. The ruling party agreed with the government, while the opposition party opposed everything in pursuit of compromises without confrontation. It was true that those who strove for justice instead of temper hold the law dear to themselves.”

Except for the constitutional monarchy of the host countries, the delegations also studied their social and cultural undertakings. They visited government offices and departments, post offices, mints and other organizations. They visited prisons, madhouses and religious and social organizations such as the YMCA and chambers of commerce. Galleries, museums, schools and other cultural institutions were also their destinations. They compared what they saw with the situation in China. In the summer and autumn of 1906, both delegations returned to Shanghai and then back to Peking. Upon their arrival in Peking, they rushed to the Summer Palace to see Empress Dowager Cixi and Emperor Guangxu. After that, the Express and Emperor had more follow-up meetings with them, two more with Zaize and Dai Hongci, three more with Duanfang, and one more with Shang Qiheng. At the meetings, the officials stated “the disadvantages of not establishing constitutional monarchy and the advantages of establishing it”. Zaize's confidential report with the recommendations for establishing constitutional monarchy was the most important. To assure the Express of the benefits of the system, Zaize pointed out that constitutional monarchy could “consolidate the imperial throne forever, reduce external threats, and resolve internal insurgencies”. The officials formally proposed the establishment of constitutional monarchy. Their conclusion was that “constitutional monarchy benefits the emperor, the people, but not the bureaucrats”.

After the delegations returned to China, they compiled a large amount of material, a total of 146 books in 67 categories. They wrote the outlines of 30 categories, and presented them to the Empress Dowager

and the Emperor. More than 400 books in foreign languages were sent to the Political Studies Department as reference materials. Dai Hongci and Duanfang also wrote *The Outlines of European and American Politics* for referral by the imperial court. They authored and compiled 133 volumes of political literature titled *The Summary of the Politics of World Powers* with general information of national politics. Duanfang wrote to the imperial court his proposals of making big decisions for long-term consolidation of power. He expounded the political situation in the European countries and the United States, pointing out that “constitutional monarchy held the key to the prosperity and booming development in the countries in the East and West.” These materials, writings and proposals provided important references for reform measures and institutional building, which played a positive role in the New Policies toward constitutional monarchy in the late Qing Dynasty.

On August 25, 1906, a meeting was held after the participants, including Prince Zaifeng, the Grand Councilors, Political Councilors and Yuan Shikai, the Beiyang Minister, had read the reports of the delegations. Most of them agreed with the idea of a constitutional monarchy. On August 29, Empress Dowager Cixi and Emperor Guangxu summoned the senior officials to announce their decision to prepare for constitutional monarchy. On September 1, the imperial court officially issued the decree of “establishing the constitutional monarchy following the examples of other countries”, which kicked off a major reform.

The media of all the host countries reported and commentated on the visit of the five Qing senior officials. The renowned German Sinologist Otto Franke wrote in the *Cologne Daily*:

“The purpose of their overseas trip is to learn from the constitutional, political and economic systems of Japan, the United States and major European countries. It is quite possible that they are trying to transplant western constitutions, political systems and economic systems into

China.”

The Times of the UK commented on the visit this way:

“People are clamoring for reform, and reform is certain to come. Peking today is not what you used to know a few years ago. Since China has abolished the imperial examination system that has been around for so long without stirring up any disturbances, it can make changes happen no matter how drastic.”

Professor Zhang Jinfan, an eminent Chinese law historian, spoke highly of this visit.

“The five officials” visit was not a casual one. They carefully examined the political system of European countries and the United States and saw clearly where the world was heading. They realized the disadvantages of China in the international environment of intense struggle.

“It is safe to say that the conclusions of their reports drew up the basic principles, framework and measures for the intended transition to constitutional monarchy in the late Qing Dynasty. They promoted constitutional monarchy and had a direct positive influence. The preparation for constitutional monarchy in the late Qing Dynasty was initiated by the five officials, in that they brought China, an ancient empire, close to the historical track of the world’s modern legal civilization. What’s more, some of the senior officials’ entourage were young and open-minded scholars. After being imbued with western democracy, they became not only supporters and advocates of the transition to constitutional monarchy in the late Qing Dynasty, but also founders of the legal system in the Republic of China.”

Chapter 9. Six Codes

After the collapse of the Qing Dynasty, the Chinese nation moved on to the Republic of China. During this period, the rule of law witnessed further development. The Nationalist Party continued with the legal reform and modernization in the late Qing Dynasty and established Six Codes. Six Codes of the Republic of China referred to the six main legal codes that make up the main body of law, namely, the constitution, administrative laws, criminal code, civil code, commercial code and code of procedures. Some scholars believe that the term referred to the six major areas of law. There might be other academic definitions. Never mind. Generally speaking, Six Codes refer to all of the statutes of the Republic of China.

Roscoe Pound, a distinguished American legal expert who had once been an adviser to the Judicial Administration Department of the Chinese government, believed that Six Codes were perfect, if not better than foreign laws. China should give full play to its role and put it into practice.

The Nationalist government was built on the ruins of the Qing Dynasty, and so was its legal system. The inherited laws continued to function after the Revolution of 1911. After the victory of the revolution, Sun Yat-sen issued a special order that the inherited laws and the new criminal code should continue to function if they would not contradict each other. The legislation that the Qing Dynasty had been unable to ratify became the basis of the legislation of the Republic of China. Yuan Shikai of the Beiyang government took the draft Qing Criminal Code as the blueprint and enacted it with amendments as the New Provisional Criminal Code of the Republic of China and a series of separate criminal codes.

Although the Qing Civil Code did not enter the legislative process, nor was it formally promulgated, it did provide materials, talent, and even references for the draft civil code of the Republic of China. The data collected for the civil code in the late Qing Dynasty paved the way for the legislation of the Republic of China. Wu Tingfang, the Minister of Law of the late Qing Dynasty, was appointed as the Minister of Justice of the Republic of China. This succession signified the continuity of legislation and legal development. Its significance should not be underestimated.

China's modern legal system experienced profound development in the Republic of China. Its legal system is still functioning effectively in Taiwan today, as an important part of China's legal system within the framework of "One Country, Two Systems". The legal subsystems in Taiwan, Hong Kong and Macao are all integral parts of the current legal system of China. With the grieving memories of national calamities in history, there's also a grand picture of the development of China's modern legal system.

Six Codes of the Nationalist Party was abolished in the Chinese Mainland on February 28, 1949, with a CPC directive on the abolition of Six Codes and the determination of the judicial principles in the liberated areas. But in Taiwan, it has been functioning for nearly 90 years till now. Although its system was abolished, its legal form and knowledge has been retained as the historical basis of the Chinese socialist legal system. So far, Chinese law still retains a legal form dominated by statutory law. The division of the six major areas of law – constitution, administrative law, criminal code, civil code, code of criminal procedure and code of civil procedure, is still applicable. It continues to be a major component of the legal system of the People's Republic of China. History will develop on the basis of what is already there, and it will move forward in accordance with its own logic to keep up with the times.

Chapter 10. Red Jurists

In October 1932, Chen Duxiu, the first general secretary of the Communist Party of China, was arrested by the Nationalist authorities. Chiang Kai-shek telegraphed to related parties: "Chen has committed a crime of endangering the Republic of China and should be handed over to a court for punishment in honor of justice." On April 14, 15 and 20, 1933, the Jiangsu High Court held three public trials of Chen Duxiu.

In court, the prosecutor accused Chen of "advocating the overthrow of the Nationalist government, which served the same purpose as the proletarian dictatorship, both for communism and against the Republic in legal viewpoint." Pursuant to Article 6 and Article 2.2 of the Emergency Law for Punishing Crimes against the Republic of China, Chen Duxiu was accused of the felony of endangering the Republic and treason.

Chen Duxiu made excellent defenses on these two charges.

In response to the charge of endangering the Republic, Chen defended himself by saying, "I admit that I was against the Nationalist Party and its government, but I don't think I was endangering the Republic. The government is not the state. Being against the government is not the same as endangering the state." He said that he was against the government for several reasons: "First, people are not free. Second, corruption runs unchecked. Third, the government is not fully devoted to resisting Japanese aggression." In the end, he concluded: "The prosecutor's charges are groundless and I should be acquitted in court."

In response to the charge of treason, Chen retorted: "What constitutes a state? It is the combination of land, people and sovereignty. If a state perishes, it always means losing the land, people and sovereignty to a foreign invader. Therefore, the state does not perish if one party takes

the place of another in a country." On the felony of treason, Chen asserted: "There is a specific definition of the crime in the criminal code. It cannot be defined in abstract terms arbitrarily. If one thinks that the government and the state are the same, and that the one in power is the state, then there would be no reason for modern law scholars to denounce Louis XIV, the king of France, for his absolute monarchical rule, proclaiming 'I am the State!'

If the opposition party should be accused of treason with its call for the overthrow of the ruling party that is not loyal to the state, that infringes upon civil rights, then all the revolutionary parties around the world should have committed the crime in history, including the Nationalist Party." "What is a republic? It is a form of government under which the head of state is not a monarch. If you believe that my struggle for the people's right to freedom of assembly, association, speech, publication and belief, and a complete democratic national assembly to punish the warlord bureaucrats is a crime of 'endangering the republic', I wonder how you will define the Republic?"

Finally, Chen pointed out: "I am not guilty at all. My only crime is to have provoked the Nationalist Party to punish me by upholding the interests of the Chinese nation and the majority of the people." "If you try to punish me in the name of law under falsified charge of 'treason' and 'endangering the Republic', I shall protest strongly till the last breath of my life. If the court is not under the full control of certain forces, and if it still hopes to maintain judicial independence both internally and externally, the court should not hesitate for a moment to acquit me and order the government to compensate me for economic and health damage during my detention."

On April 26, 1933, the Jiangsu High Court accused Chen Duxiu of "treason of propaganda with writings" and sentenced him to 13 years' imprisonment and 15 years' deprivation of public rights under Article

2.2 of the Emergency Law for Punishing Crimes against the Republic of China. Chen appealed against the ruling on June 15 to the Nationalist Supreme Court.

In the appeal petition, Chen Duxiu listed all kinds of malpractices of the Nationalist government and accused the government of true “treason” and “endangering the Republic”. He said that “if opposing such a government should result in a ‘crime of endangering the Republic and treason’, the unwarranted charges would enrage the world and future generations!”

Finally, on July 4, 1933, the Nationalist Supreme Court announced its decision to maintain the original ruling and rejected the appeal.

Chen Duxiu’s defense and appeal pleadings, together with his lawyer Zhang Shizhao’s defense, caused a stirring impact in the Chinese society. At that time, the Yadong Library published the collection of written records of Chen’s case, which was selected as a textbook of the law department by Shanghai Huijiang University and Suzhou Dongwu University. Chen and Zhang’s defense documents have also become textbooks of court defense.

Chen was not a legal expert, but his defense was professional indeed. Reading carefully, one cannot help but admiring it.

On July 23, 1921, a very important meeting – the First CPC National Congress – was held in secret at 106 Wangzhi Road (now 76 Xingye Road) in the French Concession area of Shanghai. Twelve delegates from all over the country – Li Da, Li Hanjun, Zhang Guotao, Liu Renjing, Mao Zedong, He Shuheng, Wang Jinmei, Deng Enming, Chen Tanqiu, Dong Biwu, Zhou Fuhai and Chen Gongbo, attended the meeting. Unable to attend the meeting himself, Chen Duxiu entrusted Bao Huiseng as his representative. The delegates were representatives of the 50 Communist Party members in the whole country at the time. Comintern representatives – Ma Lin (Dutch national Hank Sneevliet) and Nikolai Nikoliski (Russian national), were present. The meeting was disrupted by

the harassment from the French Concession police. The delegates then agreed to move the meeting to a boat on South Lake in Jiaxing, Zhejiang Province. On July 31, the last day of the congress, the first constitution and resolution of the CPC was adopted, and its central leadership was elected, which marked the official founding of the CPC and the beginning of its long and arduous journey of leading the revolution, reconstruction and reform in China.

There were many outstanding intellectuals among the leaders of the infant CPC. Several of them had very good knowledge of law as distinguished jurists.

As the dean of the Faculty of Arts at Peking University, an eminent professor, and the first general secretary of the CPC, Chen Duxiu naturally had his unique and profound views on law. As mentioned above, his defense and appeal pleadings during his trial by the Nationalist court were regarded as classics of law for case studies by the law schools at that time.

As an outstanding scholar, Li Dazhao had studied at the Beiyang School of Law and Politics in his early life. He also studied western legal culture in Japan. He made incisive exposition on democracy, constitutional politics, constitutional culture and the protection of people’s independent freedom and rights. He possessed profound expertise in the constitution, international law, and the history of the legal system. As a student, he published a paper on international law titled “On the Removal of Consular Jurisdiction” in *Yanzhi* (literally Governing with Speech, a journal Li edited at the Beiyang School). He also translated into Chinese and published *On International Law in China* – a monograph by Japanese jurist Imai Kazuyuki. In his article “The Constitution and Freedom of Thought”, he wrote: “Those who strive to establish a solemn and holy constitution are also in pursuit of freedom. Freedom is a requirement for human survival, and without it there would be no meaning to life.

Constitutional freedom is a requirement for the survival of constituent citizens. Without it, there is no point for a constituent nation to survive.” Later scholars edited a special collection of Li Dazhao’s writings on law, which was published by the Law Press in 2014.

Another eminent jurist was Dong Biwu. In 1914 and 1917, he traveled twice to Japan to study law and became a lawyer. In 1931, he came back to China and served in the Jiangxi Soviet as an executive member of the provisional central government of the Chinese Soviet Republic (CSR), president of the Supreme Court, and deputy chief of the Workers’ and Peasants’ Procuratorial Committee. In 1945, Dong attended the founding session of the United Nations in San Francisco as a member of the Chinese delegation. After the founding of the People’s Republic of China, he served successively as director of the Legal Affairs Committee of the Government Council, president of the Supreme People’s Court, and vice chairman of the Standing Committee of the National People’s Congress (NPC, China’s top legislature), as a leader of law-related work.

Xie Juezai was another eminent legal expert, educator, and social activist. He is known as a CPC pioneer in legal affairs and the founder of the people’s judicial system. In 1933, he served as the Interior Minister of the Central Soviet and presided over the drafting of important laws and regulations for the revolutionary base areas, including the Labor Law and the Land Law.

After the end of the Long March in 1934, he served as the Minister of Justice of the central government in northern Shaanxi and President of the High Court of the Shaanxi-Gansu-Ningxia Border Region. In 1941, he was elected deputy speaker of the Assembly of Representatives of the Shaanxi-Gansu-Ningxia Border Region. In September 1948, he was appointed as the Minister of Justice of the North China People’s Government. In 1949, he was appointed as the Interior Minister of the People’s Republic of China. In 1959, he was appointed as the President

of the Supreme People’s Court and President of China University of Political Science and Law. He became a Vice Chairman of the Fourth National Committee of the Chinese People’s Political Consultative Conference (CPPCC, China’s top political advisory body) in 1965.

Chapter 11. Great Charter of the People

While the Nationalist government dominated Chinese society and its laws, the revolutionary base area laws led by the CPC gradually emerged and grew with the revolution into a new force promoting the development of the rule of law.

In December 1928, the CPC promulgated the Jinggang Mountains Land Law in the Jinggang Mountains Revolutionary Base Area. That was the first land law under the workers' and peasants' democratic political power. There were nine articles in the law, stipulating that all the confiscated land would be owned by the Soviet government, and distributed evenly among all the people, men and women, old and young, according to population or labor power. On November 7, 1931, the First National Congress of the Chinese Soviet Republic was held in Ruijin, Jiangxi. The congress adopted a constitutional program, which stipulated that the nature of the Soviet State is a democratic dictatorship of workers and peasants, and the political system of the Soviet State is the congress of workers, peasants and soldiers. It also stipulated the rights and obligations of citizens of the Soviet State, as well as its foreign policy. At the same time, the congress adopted the Land Law of the Chinese Soviet Republic, which was enacted on December 1, 1931. It announced the abolition of the feudal system of land exploitation, stipulated the subject and scope of the confiscation of land, and announced the abolition of all usury debts. Meanwhile, it stipulated that the confiscated land would be distributed in favor of the poor and middle peasants.

In May 1941, the resistance democratic government under the leadership of the CPC promulgated the Policy Agenda for the Shaanxi-Gansu-Ningxia Border Region.

In April 1946, the Third Assembly of Shaanxi-Gansu-Ningxia Border Region adopted the Constitutional Principle of the Shaanxi-Gansu-Ningxia Border Region, which consisted of 24 articles in 5 parts: state power, people's rights, justice, economy and culture. It stipulated that the people's assembly is the organic form of state power to ensure that state power is managed by the people. It ensured extensive democratic rights of the people and that concentrated communities of ethnic minorities have the right of establishing autonomous areas. The people of the border areas are equal regardless of ethnicity. It established the principle of people's justice in border areas and stipulated that judicial organs at all levels should exercise their functions and powers independently and free of interference. Other than judicial and public security organs that are entitled to fulfill their duties, no departments or organizations should exercise the authority of arrest and interrogation, and so on.

On October 10, 1947, the CPC convened a national conference on land and formulated the Outline of China's Land Law, with a total of 16 articles. It abolished the land system of feudal and semi-feudal exploitation, and the "land to the tiller" system was adopted. The Outline stipulated that the principle of land reform is to rely on poor peasants, unite with middle peasants, protect individual businesses, and treat landlords and rich peasants fairly. It stipulated that all the land should be distributed among all the villagers in the rural areas by headcount. The landlords and their families, and the families of the Nationalist Army officers and soldiers should be granted the same land and property as peasants. The Outline summarized the experiences and lessons of the Agrarian Revolution and was a fair land law, which manifested the general direction of land reform and mobilized the peasants to participate in revolution and production. It played a decisive role in ensuring victory in the War of Resistance.

What were the legal objective of the Chinese revolution? As Dong

Biwu, one of the founders of the CPC and the first president of the Supreme People's Court of the People's Republic of China, depicted in a poem when he visited the August 1st Nanchang Uprising Memorial on July 28, 1957:

A flag for justice was raised on August 1st in Nanchang,
For the Great Charter of the People.
The land shall be owned by peasants,
Working hours shall not make the sundial too long.

Reading this poem again sets people thinking. For Dong, the objective of the revolution was “the Great Charter of the People”, which reflects the hope of a revolutionary from the bottom of his heart. The Great Charter (Magna Carta) refers to the constitutional document signed by the King of England in 1215 limiting the power of the monarch. This document later became an important basis for the British constitution and its rule of law. Here, Dong cited the Great Charter to represent the legal objective pursued by the revolutionary uprising. In particular, Dong's objective was a charter of the people, which demonstrates his deep understanding of the relationships between revolution, law and the people.

The Nanchang Uprising was the first CPC-led armed struggle that aimed at overthrowing the Nationalist government. It was with this uprising that the CPC's army – the Workers' and Peasants' Red Army – was established. It is quite straight-forward in Dong's poem that the objective of the people's revolution led by the CPC was to realize the great charter of freedom for the people, to protect the rights of peasants and workers. In short, the revolution was for the people and everything was for the people. The objective of the revolution was to ensure that the rights of the people were protected by law and fully realized.

Chapter 12. Ma Xiwu Style of Trial

When it comes to the revolutionary base areas, especially the rule of law in the liberated areas, one figure that must not be neglected is Ma Xiwu. His native place was Majiageta Village in Shaanxi Province. On January 8, 1899, he was born into a poor peasant's family in Bao'an County in northern Shaanxi. In 1930, he started his revolutionary career and joined the CPC in 1935.

There are two stories of Ma's style of trial.

In 1938, Feng Yangui, from Fengjiayuanzi Village in Gansu Province, arranged for his daughter Feng Zhiqin to marry Zhang Baier, the son of Zhang Jincai [in arranged marriages, bride and groom couldn't see each other until they were married].

By 1942, Feng decided that he should obtain a higher dowry for his daughter's hand. In May that year he tried to persuade his daughter to break off the engagement with Zhang Baier, on the pretext that she wanted to marry in accordance with her own free will. At the same time, Feng was negotiating a deal with a third party, Zhu Xiaochang, to marry his daughter for a higher price. It was at that point that Feng Zhiqin and Zhang Baier saw each other by chance and fell in love at first sight.

When Feng Zhiqin realized that her father was selling her to Zhu Xiaochang, she secretly informed the Zhangs. Zhang Jincai and 20 relatives broke into the Feng home late at night, armed with clubs, to take the girl. Feng Yangui took the Zhangs to the county court. The county judiciary office failed to investigate and study the case properly before issuing a sentence of six months imprisonment on Zhang Jincai and annulling Feng Zhiqin's marriage to Zhang Baier. Feng Yangui escaped unscathed despite his repeated “selling” of his daughter.

The ruling caused considerable anger among the parties and the local population. When she heard that Commissioner Ma Xiwu was coming to the county for an inspection, Feng Zhiqin stopped him on his way and reported to him her story. Ma conducted his own investigation and listened to her views on her marriage. After ascertaining the facts, the case was tried openly. The final verdict was: to withdraw the original judgment of the county, to validate the engagement of Feng Zhiqin and Zhang Baier, to sentence Zhang Jincai to a short imprisonment for disrupting public order, and to sentence Feng Yangui to a criminal penalty for violating government regulations through his repeated illegal dealings with his daughter's marriage.

After the ruling was announced, those who had been punished accepted the verdict, and the general public responded favorably and considered it fair and reasonable. Two young people who were in love with each other were finally free to marry.

The following is another story.

One day in the winter of 1943, a man's body was found on a hillside in Quzi County in the Shaanxi-Gansu-Ningxia Border Region. The case was reported to the government. The county judicial office conducted an investigation and ascertained that the victim was surnamed Sun, and that he had been traveling with three Su brothers before he was killed. Later, investigators found at Su's home blood in bed, on the ground and an axe. The judicial office arrested the Su brothers and charged them with murder. However, the Su brothers refused to confess in several trials. After a year of detention, the justice office was still unable to settle the case. The defendants protested and filed an appeal.

In the course of hearing this appeal, Ma Xiwu was beset by doubts and instructed the judiciary officers to conduct further on-site investigations. He found that although Sun had traveled in the company of the Su brothers, they parted ways later. He also found that it was more than 10

kilometers from Su's home to where Sun's body had been found. If the Su brothers had killed Sun at their home, they would have had to move the body more than 10 kilometers, which would not have been possible within the relevant time frame. Further investigations showed that the blood in Su's bed was the blood of a mother giving birth. The blood on the ground was from a nosebleed, and the blood on the axe was from a slaughtered sheep.

Ma Xiwu continued with his investigation and finally identified Sun's murderer. After the case was settled, he organized a public rally to exonerate the Su brothers and ordered their immediate release, while severe penalties were imposed on the murderer.

The trials aroused great concern and attention, earning him the reputation of "A Savior Judge". The Shaanxi-Gansu-Ningxia Border Region government produced a summary of Ma Xiwu's experience in handling cases and named it "Ma Xiwu Style of Trial", which was promoted in the whole border region as a role model of the people's judicial work in the liberated areas.

Ma Xiwu Style of Trial featured field investigation and analysis, to ascertain the facts of the case and handle it practically. It also involved trusting the people, informing the people, and listening to the people. Procedures were streamlined to make it easier for the people to file lawsuits. Verdicts acceptable to the parties involved and supported by the people were issued. This style of trial was generally accepted and respected by the general public at the time. Later, it also had a profound impact on the establishment of the civil litigation system in the People's Republic of China.

In December 1949, Ma Xiwu was appointed as President of the Northwest Branch of the Supreme People's Court. In September 1954, he was appointed as Vice President of the Supreme People's Court, a post which he held until his death in 1962.

With the establishment of the PRC and the development of a modern judicial system, the trial method established by Ma Xiwu in the liberated areas has been updated, but its essence will always remain valid. Its essence is the application of the philosophy of seeking truth from facts in judicial work. Investigation and evidence should be valued, and trials should be evidence-based. Common values of society should be respected and the legitimate rights and interests of the parties concerned should be protected, so as to safeguard and realize social equity and justice.

Chapter 13. Tokyo War Crimes Tribunal: Justice Prevails

On March 20, 1946, Mei Ruao, the Chinese judge in the International Military Tribunal for the Far East (IMTFE), appointed by the Republic of China, flew to Tokyo to fulfill his duties.

His Chinese colleagues and friends in Tokyo held a grand welcome banquet for Mei. At the banquet, Gu Yuxiu, Deputy Minister of Education of the Republic of China and President of the National Central University, solemnly presented him with a sword as a token of their good wishes. Mei was well aware of his responsibility and anticipated a difficult road ahead. However, he would remain determined and dedicated to his mission to safeguard peace and equity, and restore justice to the countries and people who suffered from aggression in China, Asia and the world.

The Tokyo War Crimes Tribunal stretched for nearly three years from January 19, 1946 to November 12, 1948. It was an international trial of Japan's Class A World War II war criminals. In addition to Mei Ruao, Xiang Zhejun and Ni Zhengao served as prosecutors at the IMTFE. With their wisdom and legal tools, they safeguarded the dignity of the Chinese nation, the dignity of law and the conscience of mankind.

In accordance with the decisions of the Moscow Conference on December 16-26, 1945, General Douglas MacArthur, the Supreme Commander of the Allied Powers, issued a special proclamation ordering the establishment of the IMTFE to try Japan's Class A World War II war criminals. The tribunal was approved by the Charter of the IMTFE following the model of the Charter of the European International Military Tribunal signed in London by Britain, the United States, the Soviet Union and France. The IMTFE consisted of eleven judges from China,

the United Kingdom, the United States, the Soviet Union, France, Australia, the Netherlands, Canada, New Zealand, India and the Philippines. These eleven countries each sent one prosecutor. Judge William Webb from Australia was appointed president of the Tribunal and American Assistant Attorney General Joseph B. Keenan the chief prosecutor.

On April 29, 1946, the prosecutor's commission filed an indictment to the court, alleging that 28 defendants had committed crimes against peace, war crimes, and crimes against humanity during the period from January 1, 1928 to September 2, 1945, and demanding legal liability. Three of the defendants, Shumei Okawa for one, had died or were incapacitated, they could not be tried. The actual number of defendants tried was 25.

On May 3, 1946, the trial began.

On 12 November 1948, the IMTFE announced its verdict:

Six defendants – Kenji Doihara, Koki Hirota, Seishiro Itagaki, Heitaro Kimura, Akira Muto, Hideki Tojo – were sentenced to death by hanging. Sixteen defendants, including Sadao Araki, were sentenced to life imprisonment. Shigenori Togo was sentenced to 20 years imprisonment. Mamoru Shigemitsu was sentenced to seven years.

The death sentences were carried out at Sugamo Prison in Ikebukuro on December 23, 1948.

The Japanese imperialist war criminals were finally brought to justice and punished by law. The Chinese people attended the trial both as victims and as victors in the war.

That was the contribution of the Chinese judicial community to the noble cause of justice for the people of China, for the people of the world, and for humankind.

On August 31 2015, as a legal scholar, I attended the press conference commemorating the 70th anniversary of the victory of the Chinese People's War of Resistance against Japanese Aggression and the World

Anti-Fascist War. At the conference, I made this statement on the Tokyo War Crimes Tribunal:

“The Tokyo War Crimes Tribunal drew legal conclusions about war criminals. This trial, parallel to the Nuremberg Trial in Europe, was an important manifestation of the awakening of the rule of law. Why had we prosecuted these war crimes and arrived at legal conclusions by means of trial? Because it was the shared expectation of humanity that the rule of law must be exercised to maintain permanent peace in human society, and likewise the rule of law must be exercised to punish war crimes. Punishment is a means, not an end, but it is essential and the most rational way. What is the most rational way? It is the most rational and civilized way to bring those held accountable to punishment in accordance with the law. The Tokyo War Crimes Tribunal bears great significance in terms of the rule of law and human history.

“The Tokyo War Crimes Tribunal also represented a legal decision on Sino-Japanese relations. China was invaded in World War II, but it was not alone. There were judges and prosecutors from other countries, too. It was a trial of international significance after World War II. It represented the power of international justice. For China, it resolved considerable issues regarding the war between China and Japan, and set a standard or example for how to handle war disputes and war crimes for China, Japan, and other countries in the future. Although we have not used such an approach again in the 70 years since, I believe that it merits significant vigilance from China and the world, and its legal significance and its outcomes will go beyond time.”

Part II

**Constitutional
Foundation Laid**

Seventeen years passed from the founding of the People's Republic of China in October 1949 to the outbreak of the Cultural Revolution in May 1966. Over the 17 years, the rule of law in China witnessed significant development as well as serious setbacks. In January 1950, the Marriage Law of the People's Republic of China was promulgated, which revolutionized the traditional family system and family relations in China. Arranged and mercenary marriages were abolished, replaced by modern marriage concepts such as marriage independence. The Constitution of the People's Republic of China, adopted by the First National People's Congress in 1954, was the first constitution of the People's Republic of China. It confirmed the constitutional significance of the new red state power and socialist system, and laid the constitutional foundation for the construction of a comprehensive socialist legal system. In the same period, a series of major political incidents took place in China, infringing upon the rule of law. It was the cumulative outcome of mistakes such as the Anti-Rightist Campaign that gave rise to a major crisis for politics and the rule of law, which eventually led to the havoc of the Cultural Revolution. Over the ten years from 1956 to 1966, the rule of law in China was in suspension and overall development stagnated. The Chinese society and its people paid a heavy price for that.

Chapter 14. Determination of Legal Principles

From September 12, 1948, to January 31, 1949, the People's Liberation Army (PLA) won three major military campaigns – Liaoshen, Huaihai and Pingjin – which liberated the whole of northeast China, Peking (now Beijing) and Tianjin. The entire region to the north of the Yangtze River was liberated. The PLA annihilated or reorganized more than 1.5 million Nationalist Army troops, basically eliminating the main body of the Nationalist Army.

On February 22, 1949, the CPC Central Committee radioed an important directive from Xibaipo, Hebei Province, where the head office was located at the time, to the nation and the world. It was a directive on the abolition of Six Codes and the determination of the judicial principles in the liberated areas. It announced:

“In a socialist state under the people's democratic dictatorship led by the proletariat and based on the alliance of workers and farmers, Six Codes of the Nationalist government should be abolished. The people's judicial work should no longer be based on Six Codes, but on the new laws of the people. Before such new laws are systematically promulgated, they should be based on the policies of the CPC and on various programs, laws, regulations and resolutions issued by the people's government and the PLA. At present, when the people's laws are not yet in place, the principles of judicial departments should be as follows: if existing programs, laws, orders, regulations and resolutions are available, they shall be followed and implemented; if not, the new democratic policy shall be implemented.”

This document exerted a profound impact on the law and legal theory of the liberated areas and the People's Republic of China as a whole.

On March 23, 1949, an early spring day, the willow branches had already sprouted in Xibaipo, and the bright sunshine spread all over the land. On this day, the top leaders of the CPC Central Committee – Mao Zedong, Zhou Enlai, Zhu De, Liu Shaoqi and Ren Bishi – would lead the central organs of the CPC and the headquarters of the PLA out of Xibaipo and head to Peking. At about 10 a.m., Zhou Enlai came to Mao's compound and saw him just getting up. "You should a little more rest. It will be a long day," Zhou said. "It is the day to enter Peking," Mao laughed, "I'm exhilarated even without sleep. It's exam day, how can we go in low spirits?"

Zhou smiled: "We must all pass the exam. There is no turning back."

Mao replied seriously: "We would fail if we should turn back. We shall never be like Li Zicheng [the peasants uprising leader in the Ming Dynasty who had failed]. I hope we all do well in the exam."

A huge convoy took off for Peking.

When they arrived in Peking on the 25th, Mao and his company stayed at the Shengping Hall at the Summer Palace. It was the first residence of the CPC top leaders following their entry into Peking.

Shengping Hall used to house the cultural and entertainment office of the Qing imperial court. It was responsible for organizing entertainment for Empress Dowager Cixi and Emperor Guangxu at the Summer Palace. The Hall consisted of a series of quadrangle courtyards elegantly decorated with carved beams. The Hall was located in Zide Garden, which housed the Party School of the CPC Central Committee when it first arrived in Peking. Later, the school expanded to the north for the main campus, while Zide Garden turned into its south campus.

The ancient buildings of Shengping Hall are well preserved today. Its east main gate is inscribed with a couplet that reads "Two cranes stand among the pines / An island floats on the lake behind willows." Shengping Hall has seen good times and bad. Though no longer flourishing, its

flamboyant past can still be recalled through its mottled decor.

On the day Mao and other leaders arrived at Shengping Hall, Wang Dongxing went to Shuangqing Villa in the Fragrant Hills to inspect the location and set up guard posts. On June 26th, Wang Dongxing and Li Yinqiao took Mao to the villa, which became, as related in its commentary and other documents, "Mao's first residence in Peking". Mao Zedong and the CPC thus began the phase of political life centered on Beijing. Along with it, building the legal system of the People's Republic of China began.

Chapter 15. Establishment of the Central People's Government

“The Central People's Government of the People's Republic of China is established today.” The voice of Mao Zedong reverberated all across the land of China and the world.

On January 30, 1949, Beijing was peacefully liberated. After a long period of preparation, the Central People's Government of the People's Republic of China was founded and celebrated in Beijing.

On June 15, a preparatory meeting for the new political consultative conference opened in Beijing, organized by the CPC and attended by 134 representatives from 23 entities.

At the second plenary meeting on September 17, the preparatory committee formally decided to name the conference the Chinese People's Political Consultative Conference (CPPCC).

On September 21, the First Plenary Session of the CPPCC was held in Beijing, announcing the establishment of the CPPCC. The inaugural meeting was attended by 662 representatives from 46 entities, who adopted the Common Program of the Chinese People's Political Consultative Conference, the Organization Law of the Chinese People's Political Consultative Conference, and the Organization Law of the Central People's Government of the People's Republic of China. Resolutions were passed on the national flag, the national anthem, the capital, and the adoption of the Gregorian calendar. The first national committee of the CPPCC was elected. At that time, the National People's Congress (NPC) was not yet established. The CPPCC exercised the functions and powers of the NPC. It proclaimed the founding of the PRC and turned the first page

in the history of the People's Republic of China. The Common Program of the CPPCC adopted at this meeting also became the interim constitution of China. The session decided to establish the Central People's Government of the People's Republic of China and elected the Central People's Government Council. Mao Zedong was elected Chairman of the Central People's Government.

At 14:00 on October 1, the Central People's Government Council held its first meeting at Qinzheng Hall, Zhongnanhai, proclaiming the establishment of the Central People's Government of the People's Republic of China. The resolution unanimously passed a motion stating that the Common Program of the CPPCC should serve as the political program for the Central People's Government.

At 14:55, the Party and State leaders including Mao Zedong, Zhu De, Liu Shaoqi, Song Qingling, Li Jishen, Zhang Lan and Zhou Enlai mounted the Tian'anmen Rostrum.

At 15:00 sharp, the founding ceremony the People's Republic of China officially began. The ceremony was attended by a total of 300,000 people consisting of representatives from the CPPCC, the capital's major factories, colleges and universities, government organs, citizens, farmers and city defense forces in the suburbs of Peking. Mao Zedong proclaimed to the world:

“The Central People's Government of the People's Republic of China is established today.”

He then read aloud the Proclamation of the Central People's Government of the People's Republic of China:

“The CPPCC, composed of representatives of various democratic parties, people's organizations, People's Liberation Army, regions, ethnic groups, overseas Chinese and other patriotic democratic elements throughout the country, has convened its first plenary session. Representing the will of the whole nation, the session has enacted the Organi-

zation Law of the Central People's Government of the People's Republic of China, elected Mao Zedong as chairman of the Central People's Government; and Zhu De, Lui Shaoqi, Song Qingling, Li Jishen, Zhang Lan, and Gao Gang as vice chairmen of the Central People's Government. The plenary session proclaimed the founding of the People's Republic of China and decided that Beijing should be the capital of the People's Republic of China. The Central People's Government Council of the People's Republic of China has taken office today in the capital and unanimously adopted the following resolutions: to proclaim the establishment of the Central People's Government of the People's Republic of China; to adopt the Common Program of the Chinese People's Political Consultative Conference as the policy guidelines of this government. At the same time, the Central People's Government Council declares to the governments of all other countries that this government is the sole legal government representing all the people of the People's Republic of China. This government is willing to establish diplomatic relations with any foreign government that is willing to observe the principles of equality, mutual benefit, and mutual respect of territorial integrity and sovereignty."

The national flag of the People's Republic of China has been flying over Tian'anmen Square since October 1, 1949.

At that time, the legal status of the national flag was established by the Resolution on the Capital, Calendar, National Anthem and National Flag of the People's Republic of China, adopted by the CPPCC on September 21, 1949. Subsequently, special laws were formulated for the national flag at the Fourteenth Plenary Session of the Standing Committee of the 7th NPC. The Law on the National Flag of the People's Republic of China, adopted on June 28, 1990, came into force on 1 October, 1990. This law serves as the legal basis of the national flag of China today. Article 2 of the law stipulates that "The National Flag of the People's Republic of China shall be a red flag with five stars. The flag is red in color,

has a ratio of 3:2 in length and width. The upper left is decorated with five yellow pentagonal stars, four small star rings arched on the right side of a large star, and each has an angular tip right to the center of the big star."

What do the five stars on the flag mean? Few people know or mention it now. According to historic records, the largest and central star on the flag is designed to represent the CPC, and the other four represent the people. As Mao Zedong pointed out in his article "On the People's Democratic Dictatorship", the people at that time comprised four social classes: the working class, the peasantry, the urban petty bourgeoisie and the national bourgeoisie. These four little stars symbolize the four social classes that made up the people. Now, China's class makeup has gone through tremendous changes. The "urban petty bourgeoisie and national bourgeoisie" no longer exist, but the four little yellow stars on the national flag still shine in the sky.

Chapter 16. First Legislation of the People's Republic of China: The Marriage Law

Marriage has always been regarded as a "lifetime event", with a great influence on every individual and family in China.

In ancient China, marriages were arranged by parents and matchmakers.

All that has changed since 1950. Freedom became the key word in marriage.

In terms of getting married, people began to pursue "freedom of love". In terms of divorce, people also advocated "freedom to divorce". The traditional idea of "once married, always married" was challenged. Statistics indicate that from 1951 to 1956, about six million couples divorced in China.

That was triggered by the Marriage Law of 1950.

On May 1, 1950, the Marriage Law of the People's Republic of China came into force. It was the first law promulgated by the People's Republic of China. It was adopted by the 22nd Session of the Government Council on March 3 and the 7th Session of the Central People's Government Committee on April 13, 1950. It mainly focused on regulation of marriage relationships and various issues concerning domestic relationships. It contained 27 articles in eight chapters, including provisions, marriage, family rights and obligations, relationship between parents and children, divorce, custody and education of children after divorce, property and life after divorce and supplementary provisions.

This marriage law established a series of important legal principles. The feudal marriage system, including arranged marriage, men's superiority over women, and disregard for the interests of children, was abol-

ished. A new democratic marriage system featuring freedom of marriage between men and women, monogamy, equality of rights between men and women, and protection of the lawful rights and interests of women and children was established. Bigamy, concubines and child brides were prohibited. Interference in widows' freedom of marriage was prohibited. Any attempt to ask for money and property under the pretext of marriage was prohibited. It stipulated:

"Marriage shall be based on the free will of a man and a woman. No party may coerce the other party to enter into marriage, and no third party may interfere with the marriage."

"In order to get married, the man shall not be younger than 20 years old and the woman shall not be younger than 18."

"The man and the woman who apply to get married shall go to the marriage registration authority in person to register. If they meet the requirements of this law, they shall be registered and be given a certificate of marriage by the local government."

"The husband and the wife are partners and shall be equal in familial status."

"Both husband and wife have the obligation to love and respect each other, to help each other, to support each other, to maintain harmony and unity, to work, to raise children, and to work together for family happiness and the building of a new society."

"Both the husband and the wife are entitled to free choice of career and social life."

"Both the husband and the wife have equal ownership and rights to dispose of family property."

"The husband and the wife have the right to use their own names."

"The husband and the wife have the right to inherit from each other."

"Divorce shall be granted if the husband and the wife both agree to

divorce voluntarily. If one party demands a divorce resolutely, the divorce shall also be approved and executed if mediation by the people's government and the judicial organ at district level or equivalent fails."

"The bond between parents and children shall not be destroyed by the divorce. After divorce, the children are still the offspring of both parents regardless whether the father or the mother acts as their guardian. Parents are still responsible for raising and educating children after divorce."

"Whoever interferes in the freedom of marriage and causes the death or injury of the person involved, the interferer shall be held criminally liable."

Though it went through several rounds of revisions and amendments, the 1950 Marriage Law laid the foundation for the marriage and family system, and its principles and spirit live on today.

Chapter 17. Land Reform Law and Agricultural Cooperation

In an agricultural economy, land was an essential means of production for a farmer, the most fundamental source of food and clothing for a family, and an extremely important economic foundation for a society. For thousands of years, the land system has been China's fundamental system, and it has influenced or determined the status and development of Chinese society.

On June 28, 1950, the Eighth Session of the Central People's Government Committee adopted the Land Reform Law of the People's Republic of China (draft), a total of 40 articles in six chapters. On June 30, 1950, it was promulgated by the Central People's Government. It stipulated that the purpose of land reform was to abolish the feudal exploitation of land by the landlord class and implement the farmers' ownership of land, so as to liberate the rural productive forces, develop agricultural production and open the pathway to the industrialization of China. According to the law, the land owned by landlords would be confiscated and land in rural areas owned by ancestral halls, temples, churches, schools and organizations would be expropriated. Land owned by rich peasants and cultivated by themselves or hired labor would be protected from infringement, and a small amount of leased land would be retained. The middle peasants will be united, the land and other property of peasants shall not be violated in land reform. All the land and other means of production thus confiscated and requisitioned, except those which were lawfully owned by the state, would be taken over for unified, equitable and rational distribution to poverty-stricken poor peasants who had little or no land and who lacked other means of production. Landlords would

be given an equal share so that they could make a living with their own labor and thus reform themselves through labor. The law also provided specific provisions on the methods of land distribution, the treatment of special problems in land reform, and the organs and methods for the implementation of land reform. It thoroughly transformed China's land system for thousands of years, and defined the design and the detailed arrangements for the new system. The following provisions are particularly noteworthy:

"The land ownership system of feudal exploitation by the landlord class shall be abolished and the system of peasant land ownership shall be introduced in order to set free the rural productive forces, develop agricultural production, and thus pave the way for the industrialization of the People's Republic of China."

"The land, draft animals, farm implements, and surplus grain of the landlords, and their surplus houses in the rural areas shall be confiscated, but their other properties shall not be confiscated."

"The rural farmers' assembly, the farmer's congress and its elected committees of the farmers' association, the farmers' congresses at district, county and province levels and their elected committees of the farmers' associations shall be the lawful executing organs for the reform of the land system."

"After the status of the land reform, the people's government shall issue land ownership certificates and recognize the right of all landowners to operate, trade and lease their land freely. All land contracts prior to the reform of the land system shall be annulled."

"The class status classification shall be in line with the decision promulgated by the Central People's Government. The principle of voluntary reporting and public decision making on a person's class status shall be implemented. The final decision shall be made by the rural farmers' assembly and farmers' congress under the leadership of the rural peo-

ple's government. If the person is not a member of the farmers' association, he/she is also invited to participate in the assessment and allow him/her to plead. The appraisal meeting shall be submitted by the rural people's government to the district people's government for approval. If the person or others have different opinions, he/she may file a complaint with the county people's court within 15 days after the decision, which shall be decided by the county people's court."

"In order to ensure the implementation of the land reform, counties shall organize people's courts and use the method of itinerant trials to try and punish abusers and those who disobey or undermine the land reform laws and regulations. It is strictly prohibited to arrest, beat, or kill without proper cause, or inflict any kind of corporal punishment."

The peasants, especially poor peasants with neither land nor property, had at last acquired their own land.

With the gradual victory of the Liberation War, land reform was carried out on every land liberated by the PLA. New problems emerged after land distribution among farmers as a result of household-based operation. Under the guidance of the Party's policy, mutual aid and cooperation began to evolve.

In September 1951, the first phase of Rural Mutual Aid and Cooperation began. In September, the CPC Central Committee convened a national conference on the subject. The meeting discussed and adopted the Resolution on Mutual Aid and Cooperation in Agricultural Production. It was issued as draft to local party committees for trial implementation. Therefore, the national agricultural mutual aid and cooperation was kicked off in the whole country.

By the end of 1952, 40 percent of the country's peasant households had joined rural mutual aid cooperatives, pushing the number to over 8.3 million. More than 3,600 primary agricultural cooperatives were trial run.

On October 4-11, 1955, the Sixth Plenary Session of the 7th CPC

Central Committee adopted the Resolution on Agricultural Cooperation, which stipulated that by the spring of 1958, primary agricultural cooperation should be in place in most parts of the country, facilitating semi-socialist cooperation. As a result, the agricultural cooperation movement developed rapidly across the whole country three months later. By the end of 1956, 96.3 percent of the country's peasant households had joined primary cooperatives, and 88 percent of them had joined advanced cooperatives. Basically, the socialist transformation had been achieved, and the ownership transformation from individual ownership of peasants to socialist collective ownership had been successfully completed.

The agricultural cooperation movement was a process in which the CPC, through various forms of mutual aid and cooperation, transformed the individual agricultural economy based on private ownership of means of production into an agricultural cooperative economy based on public ownership of means of production.

It was a major transformation of China's social relations of production.

The agricultural cooperation continued to evolve into the people's commune until the end of the Cultural Revolution.

In December 1978, after the Third Plenary Session of the 11th CPC Central Committee, the household contract responsibility system was implemented in rural areas. On the face of it, that was a return to China's traditional agricultural production relations. With closer examination, you will see that it was not the case, because the contracted land was still owned by the collective. At the beginning of the People's Republic of China, land was owned by the peasants who cultivated the land, while under the contract system, the peasants cultivated the land owned by the collective. It was a contractual relationship between farmers and the collective.

Therefore, the Standing Committee of the NPC formulated the Law

of the People's Republic of China on the Contracting of Rural Land in August 2002, which came into force on March 1, 2003. It was this law that freed the peasants from the land, from collective labor and from the rural household registration system. Since the Third Plenary Session of the 11th CPC Central Committee, and especially after this law was promulgated, nearly 300 million peasant workers have migrated between rural areas and cities. The law was remarkable in that it ended a historical period in which problems of agriculture, farmers, and rural areas were largely resolved by the CPC with policy adjustments. It liberated the rural productive forces in a legal sense, stimulated the farmers' enthusiasm for production, promoted rural reform, and provided a systemic basis, labor resources, and vitality for urbanization, market economy system reform, and modern rural construction in China.

At present, the Law of the People's Republic of China on the Contracting of Rural Land is facing new challenges, which also means new historical opportunities for China's rural land system in the construction of new rural areas and the expansion of urbanization.

Chapter 18. Five Principles of Peaceful Coexistence

It was a compulsory course for the leaders of the young republic to deal with relations between states. The establishment of the People's Republic of China provided a historic new opportunity for building new international relations, and a new test for the Chinese communists.

The Five Principles of Peaceful Coexistence refer to China's five basic principles for handling international relations: mutual respect for territorial integrity and sovereignty, non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence. Since the 1950s, they have been the basic principles of international law that generations of Chinese leaders have sought to promote, advocate and exercise. They are also an important contribution from China, and other countries involved, to international law.

At the end of 1953, the Chinese government and the Indian government conducted border negotiations between the two countries. On December 31, Premier Zhou Enlai held a talk with the Indian government delegation and proposed that five principles should be adopted as the principles of handling bilateral relations. In 1954, during his visits to India and Myanmar, Zhou issued joint statements with Indian Prime Minister Jawaharlal Nehru and Myanmar Prime Minister Nu, agreeing to adopt the Five Principles of Peaceful Coexistence as the guiding principles of bilateral relations:

"The prime ministers of both countries reaffirmed the Five Principles of Peaceful Coexistence guiding their bilateral relations and felt that they should be applied to their relations with Asia and the rest of the world as well. If these principles should apply not only to states but also

to general international relations, they would form a solid basis for peace and security."

The Five Principles were formally written into the preface to The Agreement between the People's Republic of China and the Republic of India on Trade and Transportation between Tibet of China and India, signed on April 29 1954. That was the first time for the Five Principles of Peaceful Coexistence to be included in a formal international document.

In June 1954, Zhou Enlai led a Chinese delegation to India. He once again elaborated on the Five Principles of Peaceful Coexistence:

"Countries, big or small, strong or weak, regardless of their social systems, can coexist peacefully. The national independence and independent rights of peoples must be respected. People of all states should have the right to choose their national systems and lifestyles and should not be subject to interference from other countries."

On June 28, the Chinese and Indian prime ministers issued a joint statement, adding: "China and India have recently reached an agreement. In this agreement, they set out certain principles guiding relations between the two countries, namely, mutual respect for territorial integrity and sovereignty, non-aggression, non-interference in each other's internal affairs, equality and mutual benefit and peaceful coexistence."

In April 1955, the Asian-African Conference was held in Bandung, attended by delegates from 29 countries and regions. The conference issued a declaration on the promotion of world peace and cooperation, which reaffirmed the Five Principles of Peaceful Coexistence.

In 1957, Mao Zedong, Chairman of the CPC Central Committee and President of the People's Republic of China, visited the Soviet Union. He declared that "China firmly advocates that all countries implement the Five Principles of Peaceful Coexistence."

In 1974, Deng Xiaoping, Vice Premier of the State Council, emphasized at the Special Sessions of the UN General Assembly that political

and economic relations between countries “should be based on the Five Principles of Peaceful Coexistence”.

In the practice of international law, the Five Principles of Peaceful Coexistence have been the basis of China’s independent foreign policy of peace for a long time. Accepted by the vast majority of countries, the principles have evolved into the basic norms of international law that have been universally recognized by the international community.

Former Indian President K. R. Narayanan said that the Five Principles of Peaceful Coexistence are the basis for countries to coexist in peace and are universally accepted norms guiding international relations. Today, even after more than 60 years, they still have important practical significance in guiding peaceful coexistence among countries.

Julian Robert Hunte, President of the 58th Session of the UN General Assembly and Foreign Minister of Saint Lucia, pointed out that the Five Principles of Peaceful Coexistence have played an important role in international politics and diplomacy since their formal establishment in 1954 and would continue to have a far-reaching impact on international relations in the new situation.

On June 14, 2004, the Chinese People’s Institute of Foreign Affairs held an international seminar on the 50th anniversary of the Five Principles of Peaceful Coexistence in Beijing. More than 100 political leaders and senior scholars from 12 countries around the world attended the commemoration for the historic event.

On June 28, 2014, the 60th anniversary of the Five Principles of Peaceful Coexistence was celebrated in Beijing. Chinese President Xi Jinping delivered a speech at the commemoration ceremony. Premier Li Keqiang attended a reception to mark the occasion. President Thein Sein of Myanmar and Vice President Mohammad Hamid Ansari of India attended the commemoration. President Xi exchanged congratulatory messages with Indian President Pranab Kumar Mukherjee and Myanmar

President Thein Sein. Xi said that over the past 60 years, the Five Principles of Peaceful Coexistence have withstood the test of a volatile international situation, and have been widely accepted and observed by the international community. The principles have become basic norms guiding state-to-state relations, and have played an important role in promoting world peace and human progress. In the current context of a profound shift in the international political and economic situation, the Five Principles of Peaceful Coexistence retain strong vitality and will continue to contribute to a new model of international relations based on equality, mutual trust, inclusiveness, mutual learning and win-win cooperation.

Chapter 19. First National People's Congress

Talking about the First National People's Congress (NPC), there is one figure that should not be neglected – Shen Jilan, the only NPC deputy to be re-elected for twelve consecutive terms.

Shen Jilan, of Han nationality, was born in December 1929 in Pingshun County, Shanxi Province. She was educated to primary level.

On February 6, 1943, Li Shunda of Xigou Village in Shanxi Province answered the call of the CPC Central Committee and organized with six other peasants a mutual aid group for agricultural production. They adopted a model combining productive labor with military duties, that is, the combination of agricultural activities and armed struggle against the enemy, which increased production to cope with natural disasters without undermining military duties and logistical supplies to the front. Because of that, Li Shunda and his mutual aid group were commended by local governments for many years in a row.

In 1947, at the age of 18, Shen Jilan married Li Shunda at Xigou Village.

In 1950, Shen mobilized a dozen good friends to join the mutual aid group. On March 9, 1951, *People's Daily* published a headline article of the Xinhua News Agency entitled “This Year's Harvest Guarantee: A Challenge from the Li Shunda Mutual Aid Group to the Nation – A Patriotic Labor Contest Under Way upon the Call of the Ministry of Agriculture”, which inspired a nationwide patriotic production competition.

In 1952, with the approval of authorities, Li Shunda organized 26 peasants to set up a primary agricultural production cooperative – Xigou Agriculture, Forestry and Animal Farming Cooperative. Li was elected as the chief, and Shen was elected as his deputy. It was the country's first

primary agricultural production cooperative. In the cooperative, Shen led women to start a labor competition with men and strive for equal pay for women. In response to a spring drought, Shen set up a women's team to carry out drought relief work like men. Under her leadership, women won equal pay for equal work through their own efforts. That year, the cooperative had a bumper harvest and received the Golden Star Medal from the Ministry of Agriculture of the Central People's Government. Subsequently Li Shunda changed the name of the cooperative to Xigou Golden Star Production Cooperative of Agriculture, Forestry and Animal Farming.

In 1953, Shen Jilan joined the CPC.

In 1954, Shen was elected one of the first NPC deputies. She rode a donkey to Beijing to attend the NPC session. It was said that the most memorable event of her life so far was to vote for Mao Zedong as the President of the People's Republic of China.

Previously, in November 1952, the CPC Central Committee had made the decision to prepare immediately for convening the NPC and formulating the Constitution of the People's Republic of China.

In January 1953, word came that the Central People's Government Committee had adopted the Resolution on Convening the National People's Congress and the Local People's Congresses at Various Levels. A decision had also been made to set up a committee to prepare a draft Constitution.

In December 1953, nearly 300 million voters on the Chinese mainland participated in the elections of NPC deputies and deputies of local people's congresses. A total of 5,669,000 deputies at local levels and 1,226 deputies at national level were elected.

On September 15, 1954, the First Session of the First National People's Congress of the People's Republic of China opened in Beijing. More than 1,200 deputies from across the country attended the session,

which adopted the Constitution of the People's Republic of China, elected the President of the People's Republic of China and the Standing Committee of the National People's Congress, organized the State Council, and elected the President of the Supreme People's Court and the Procurator-General of the Supreme People's Procuratorate. The convening of this session marked the birth of the NPC. At this session, Mao Zedong became the first president of the People's Republic of China, Liu Shaoqi became the chairman of the First Standing Committee of the NPC, and Zhou Enlai became the first premier of the State Council.

The people enjoy the highest status in the People's Republic. They are the owners of the country and society, the ultimate source of all power. Only power from the people and for the people endures and is invincible. A people's democracy is fundamentally demonstrated by the degree to which the people have access to the right to vote, and to elect the people they trust to public office to exercise power on their behalf.

The socioeconomic status of the people, and the extent to which they can truly act as the owner of the state and society, testify to the essence of a state power and to the people's ownership of the state power.

Chapter 20. First Constitution of the People's Republic of China

The concept of a constitution, originating in the West, is the product of the victory of the modern bourgeois revolution. However, as an important achievement of human political civilization, the concept is not owned by the West. Socialism does not seek to oppose capitalism, but to transcend capitalism. We are not saying that socialism does not need constitution – it needs better governance of the basis of its constitution to highlight the superiority of socialism and to guide the path to the future development of mankind.

Liuzhuang (formerly known as *Shui Zhu Ju*, Lakeside Bamboo House) is the most famed garden in the West Lake Park in Hangzhou. It is located at the foot of the Dingjia Mountain. According to legend, during the reign of Emperor Guangxu (1875-1908), there was a scholar by the name of Liu Xuexun, a native of Xiangshan, Guangdong. After passing the provincial-level exam, he went to Peking to attend the imperial exam. He stopped at Hangzhou to visit the West Lake and was captivated by its exceptional beauty. He could not help but exclaim that "My hometown offers no match of such beauty as West Lake." Eighteen years later, he revisited Dingjia Mountain and built a southern Guangdong style private garden. He transported carved windows and fine furniture from his hometown in Guangdong for the courtyard. The manor was by the lake at the foot of the mountain, creating a fresh and tranquil space with rippling clear waters, rustling bamboo shades, and meandering trails and corridors.

After 1949, the manor was transformed into West Lake State Guesthouse. Mao Zedong and other Party and state leaders stayed there on

many occasions to work, study or enjoy a vacation. Many of the articles they used still remain there.

In the winter of 1953, Mao Zedong and his entourage left Beijing on board a special train for Hangzhou. They were on their way to draft the first constitution of the People's Republic of China. Mao reportedly told his entourage on the train, "To rule a country, we have to have a fundamental law. We are going to Hangzhou to work on such a law." As the train continued south, thoughts raced through the minds of the great leader.

After intense work, the first draft of the Constitution of the People's Republic of China was formulated. It was then amended following solicitations.

In June 1954, the Central People's Government Committee held the 30th session that adopted the Constitution of the People's Republic of China (draft) and the resolution to release the draft constitution. Local governments at all levels were required to mobilize people to offer opinions on possible amendments. On June 16, *People's Daily* published the full text of the draft constitution and issued an editorial calling for extensive discussion. A vigorous discussion on the draft unfolded all over the country. The draft became a hot topic of discussion. One hundred and fifty million people, roughly a quarter of the total population of China at that time, participated in the discussion. A total of 1.1 million suggestions were made.

As the older generation of jurists recall, after the release, there was a nationwide discussion on the draft constitution. Fuzhou city used more than 300 loudspeakers to broadcast the draft to its population of half a million in both Fuzhou dialect and southern Fujian dialect. It was the height of summer, and many parts of the country were hit by floods. In some localities, the people had to hold their discussions on dykes. In other locations, traffic was interrupted. Tens of thousands of written

suggestions had to be transported by airplanes. Even under such difficult conditions, the general public was enthusiastic about the draft constitution. Many constructive suggestions were put forward on almost every article of the draft, from major principles to minor issues such as punctuation.

On September 20, 1954, the First Plenary Session of the 1st NPC was convened, which unanimously adopted the Constitution of the People's Republic of China. The first constitution of the People's Republic of China, the 1954 Constitution, was born. Today, it remains an outstanding constitution.

It was stipulated in the Constitution that:

"The People's Republic of China is a socialist state under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants."

"All power in the People's Republic of China belongs to the people. The National People's Congress and the local people's congresses at various levels are the organs through which the people exercise power."

Chapter 21. Suspension of the Rule of Law

On April 25, 1956, Mao Zedong made the famous speech “On the Ten Major Relationships” at an enlarged meeting of the Politburo of the CPC Central Committee. In his speech, he put forward the slogan of “Let a hundred flowers blossom, let a hundred schools of thought contend”. In November 1956, the Second Plenary Session of the 8th CPC Central Committee decided to begin a large-scale Party-wide rectification movement from 1957.

On April 27, 1957, the CPC Central Committee issued the Directive on the Rectification Movement and decided to carry out a Party-wide rectification movement to correctly deal with the contradictions within the people and to oppose bureaucracy, sectarianism and subjectivism [the doctrine that knowledge and value are dependent on and limited by your subjective experience]. It was necessary to mobilize the general public to offer criticisms and suggestions to the Party.

On May 1, *People's Daily*, the official newspaper of the CPC, published the above directive, calling on people outside the Party to speak up, and encouraging the general public to put forward their own ideas and opinions to the Party and the government to help with the Party's rectification efforts.

Immediately afterwards, Lu Dingyi, then Minister of the Central Publicity Department, delivered a speech titled “Let a hundred flowers blossom, let a hundred schools of thought contend”, advocating “freedom of independent thinking, freedom of debate, freedom of creation and criticism in art and science, and freedom of expression, insistence and reservations.” People from all walks of life, led by intellectuals, were encouraged to make suggestions to the Party and the government for

improvements. For a time, all the newspapers, magazines and the media published all the different voices. Intellectuals were inspired by the openness of the CPC to self-criticism.

However, that situation didn't sustain. Some of the suggestions from the democratic parties clashed with the ruling Party. Many of their criticisms were considered too harsh and even hostile. They even suggested that leadership power should rotate among the CPC and the democratic parties.

On May 15, Chairman Mao Zedong wrote an article titled “The Situation Is Changing” and called on the public to be fully aware of the situation of class struggle and the attack from the Rightists.

From June 8, the Anti-Rightist Campaign gradually intensified. The CPC Central Committee issued the Directive on Organizing Forces to Counterattack the Rightist Attacks. *People's Daily* published an editorial titled “Why Has This Happened?”, which argued that “a few Rightists, in the name of ‘helping with the Party's rectification’, have seized the opportunity to overturn the CPC and the working class, and overturn the great cause of socialism.”

On June 14, *People's Daily* published another editorial, criticizing *Wen-bui Daily* and *Guangming Daily* for their bourgeois tendencies. The editorial stated that “some people say that it was a conspiracy to let people speak up. We say that it was not planned in secret. We informed the enemy in advance: Only by letting the ghosts and monsters out of their cages can we root them out; only by letting the poisonous weeds out of their soil can we remove them.”

As a result, the Anti-Rightist Campaign became a fully-fledged nationwide mass political movement.

The surging Anti-Rightist Campaign caused severe disruption to the development of the rule of law in China, dragging it directly into a freezing winter. During the decade from 1956-1966, no law at all was enacted

in China, and in the decade of the Cultural Revolution from 1966 to 1976, no other law than the 1975 Constitution was enacted.

In 1978, the CPC convened the 3rd Plenum of the 11th CPC Central Committee, rejecting every aspect of the Cultural Revolution, putting forward the principle of “promoting socialist democracy and perfecting the socialist legal system” and implementing the principle that “there shall be laws to abide by, everyone should abide by the law, the law must be enforced strictly, and those who violate the law must be dealt with.” China reopened the door to the rule of law and renewed its path to the rule of law. The tragedy of history should never repeat itself, but we should still be highly vigilant and root out any risks. Only democracy and the rule of law can truly keep people away from disasters. Only by realizing people’s democracy and building a country ruled by law, can society be harmonious and beautiful, can the country be prosperous and powerful, and can the people be happy and free.

Part III

Renewal of the Rule of Law

In October 1976, the Cultural Revolution came to an end, marking the end of an era and the beginning of another. In the aftermath of the catastrophe, there was an urgent need for reconstruction. It would not be easy to get out of the shadow of the Cultural Revolution.

Inspired by the “Discussion on the Criterion of Truth” and resolution of the Third Plenary Session of the 11th CPC Central Committee, the Chinese people took a clear look at the past mistakes, real conditions, and future goals of the nation.

The Third Plenary Session called on the Party and state “to develop socialist democracy and improve the socialist legal system”, suggesting that “there shall be laws to abide by, everyone should abide by the law, the law must be enforced strictly, and those who violate the law must be dealt with.” It also adopted a resolution redressing unjust, false and wrong cases.

From then on, China unlocked its doors to reform and opening up and set out on the journey of building democracy and the rule of law. The Chinese people forged ahead, with no hesitation or misgiving, and won their way to the current Constitution (the 1982 version), which intensified the power of the people’s congresses and reinstated important institutions such as the people’s procuratorates.

The 15th CPC National Congress in 1997 marked another key milestone in the rule of law in China, which set the rule of law as the cardinal national governance principle and the goal of building a socialist country under the rule of law. The rule of law and democracy have become the national theme of the new era in China.

Chapter 22. Historic Turning Point

The autumn season of 1976 seemed exceptionally beautiful.

On October 6, Hua Guofeng, First Vice Chairman of the CPC Central Committee and Premier of State Council, along with founding statesmen Ye Jianying and Li Xiannian, with the support of Wang Dongxing, Director of the General Office of the CPC Central Committee, arrested the Gang of Four at Huairan Hall in Zhongnanhai. The Gang of Four were detained for investigation, marking the end of the decade-long Cultural Revolution.

On October 7, Hua Guofeng was elected as chairman of the CPC Central Committee and chairman of the CPC Central Military Commission.

In 1977, Deng Xiaoping resumed office.

On May 10, 1978, an article titled “Practice Is the Sole Criterion for Testing Truth” was published in *Theory Forum*, a journal of the CPC Central Party School.

On May 11, *Guangming Daily* published the article as an opinion piece.

On May 12, *People’s Daily* and *PLA Daily* reprinted the article in full.

The article had a huge impact on people all over the country, activating an extensive debate. It laid the ideological ground for the central working conference and the Third Plenary Session of the 11th CPC Central Committee.

On December 18-22, 1978, the Third Plenary Session of the 11th CPC Central Committee was held in Beijing.

This event marked a historic turning point. Perhaps many of the participants at that time did not realize that the meeting would be the

starting point for China's reform and opening-up and would herald a new era for the nation. The conference adopted a communique, which stated that:

"Since 1979, we should shift the emphasis of our Party's work and the attention of the people of the whole country to socialist modernization.

"This is of major significance for fulfillment of the three-year and eight-year programs for the development of the national economy and the outline for 23 years, for the modernization of agriculture, industry, national defence and science and technology and for the consolidation of the dictatorship of the proletariat in our country.

"The session held a serious discussion on the question of democracy and the legal system. It holds that socialist modernization requires centralized leadership and strict implementation of various rules and regulations and observance of labor discipline. Bourgeois factionalism and anarchism must be firmly opposed. But the correct concentration of ideas is possible only when there is full democracy. Since for a period in the past democratic centralism was not carried out in the true sense, centralism being divorced from democracy and there being too little democracy, it is necessary to lay particular emphasis on democracy at present, and on the dialectical relationship between democracy and centralism, so as to make the mass line the foundation of the Party's centralized leadership and the effective direction of the organizations of production. In ideological and political life among the ranks of the people, only democracy is permissible and not suppression or persecution. It is essential to reiterate the 'principle of three not': not seizing on others' faults, not putting labels on people and not using the big stick. Leadership at all levels should be good at concentrating the correct ideas of the masses and making appropriate explanation and persuasion in dealing with incorrect ideas. The constitutional rights of citizens must be resolutely protected

and no one has the right to infringe upon them.

"In order to safeguard people's democracy, it is imperative to strengthen the socialist legal system so that democracy is systematized and written into law in such a way as to ensure the stability, continuity and full authority of this democratic system and these laws; we must ensure that there are laws to abide by, that laws are observed and strictly enforced, and that lawbreakers are prosecuted. From now on, legislative work should have an important place on the agenda of the National People's Congress and its Standing Committee. Procuratorial and judicial organizations must maintain their independence as is appropriate; they must faithfully abide by the laws, rules and regulations, serve the people's interests, keep to the facts; they must guarantee the equality of all people before the people's laws and deny anyone the privilege of being above the law."

Democracy and the rule of law in China entered a new historic period, opening the door to the era of reform and opening up. The Resolution on Certain Questions in the History of Our Party Since the Founding of the People's Republic of China (adopted by the Sixth Plenary Session of the Eleventh Central Committee of the Communist Party of China on June 27, 1981) drew these conclusions:

"The Third Plenary Session of the Eleventh Central Committee in December 1978 marked a crucial turning point of far-reaching significance in the history of our Party since the birth of the People's Republic. It put an end to the situation in which the Party had been advancing haltingly in its work since October 1976 and began to correct conscientiously and comprehensively the 'Left' errors of the Cultural Revolution and earlier. The plenary session firmly discarded the slogan 'Take class struggle as the key link,' which had become unsuitable in a socialist society, and made the strategic decision to shift the focus of work to socialist modernization. It declared that attention should be paid to solving

the problem of serious imbalances between the major branches of the economy and drafted decisions on the acceleration of agricultural development. It stressed the task of strengthening socialist democracy and the socialist legal system. It examined and redressed a number of major unjust, false and wrong cases in the history of the Party and settled the controversy on the merits and demerits, the rights and wrongs, of some prominent leaders.”

Chapter 23. Rectification of Miscarriages of Justice

During the Cultural Revolution, there had been many unjust, false and wrong cases. After the end of the Cultural Revolution, the general public felt strongly that they should be redressed immediately.

On December 10, 1977, Hu Yaobang was appointed as minister of the Organization Department of the CPC Central Committee. The rectification of miscarriages of justice began.

On January 18, 1978, the Organization Department of the CPC Central Committee held a panel discussion of vice ministers from 26 ministries and commissions of the Central and State organs to discuss the reappointment of officials as soon as possible. Hu Yaobang made a speech at the meeting, pointing out that officials were valuable assets of the Party. All the officials on the waiting list must be appointed to office as soon as possible.

On April 5, 1978, the CPC Central Committee approved a request by the Central United Front Department and the Ministry of Public Security to redress all the Rightist (resulting from the Anti-Rightist Campaign). Under the leadership of Party Committees at all levels, rapid progress was made. The work was completed all over the country by mid-November. By the end of 1980, the miscarriages of justice involving more than 550,000 officials had been rectified. The victims restored their political reputation and resumed office.

The central working conference in November 1978 officially kicked off the comprehensive rectification of the miscarriages of justice. On November 25, Hua Guofeng announced the resolution of the Political Bureau of the CPC Central Committee at the meeting:

Reverse the Central Committee's decision on the Tiananmen Incident [a protest at Tiananmen Square on April 5, 1976, labeled as counter-revolutionary];

Reverse the verdicts on the February Adverse Current [the joint efforts by a group of Communist Party veterans to oppose the ultra-leftist radicalism at the beginning of the Cultural Revolution], and the Group of Sixty-one Traitors Led by Bo Yibo;

Overturn the erroneous conclusions which had been adopted on Peng Dehuai, Tao Zhu, Bo Yibo, Yang Shangkun. Party committees at provincial, municipal and autonomous region levels should rectify typical local cases based on the principle of seeking truth from facts. The special groups of the Central Committee should terminate their work. All the cases should be handed over to the Central Organization Department.

The cases of Kang Sheng and Xie Fuzhi have created deep indignation among the people. They should be prosecuted in accordance with the law.

The communique of the Third Plenary Session of the 11th CPC Central Committee stated that serious discussions had taken place on some major political events of the Cultural Revolution, as well as some issues carried over from history and predating the Cultural Revolution. It was agreed that properly addressing these issues was essential to further consolidate national stability and unity, to empower and shift the work focus of the whole Party, and to unite the military forces and all ethnic groups as one to look ahead and mobilize all positive factors to work on the Four-Modernization Drive.

In January 1979, the Central Commission for Discipline Inspection held its first plenary session. It was emphasized at the meeting that all miscarriages of justice should be resolutely corrected once they had been uncovered. All falsified evidence, all incorrect rulings, and all wrong verdicts must be rectified regardless of when and how they had been judged, by whatever organization, or which leader had approved them.

This work focused mainly on the following:

First to be overturned were the verdicts on some leaders of the Party, the State and the Military who had been framed during and before the Cultural Revolution.

At the end of 1978, the CPC Central Committee made the decision to overturn the judgments against Peng Dehuai and Tao Zhu after the Third Plenary Session of the 11th CPC Central Committee. Since both had passed away, the Central Committee organized a solemn memorial meeting for them.

At the Fifth Plenary Session of the 11th CPC Central Committee in February 1980, the decision was made on the case of Liu Shaoqi that all the falsified charges leveled at him, and the wrong verdicts imposed on him were overturned. His reputation as a great Marxist and proletarian revolutionary, and one of the major leaders of the Party and the State, was restored, which marked the final rehabilitation of the worst injustice of the Cultural Revolution.

On September 19, 1980, the CPC Central Committee issued a circular stating that the comrades who had been wrongly criticized in the media and Party and military documents during the Cultural Revolution should all be rehabilitated. All the falsified accusations leveled at them should be overturned.

Second, the CPC Central Committee rehabilitated some central authorities that had been wrongly criticized or framed during the Cultural Revolution. It overturned the wrong verdicts on the International Department of the CPC Central Committee, the Central Publicity Department, the national authorities of the united front, ethnics and religion. The major miscarriage of justice that involved framing the former Ministry of Culture was totally reversed. The unjust case against the General Political Department of the PLA was reversed. The Minute of the PLA Literature and Art Work Conference in February 1966 was rescinded.

The accusation imposed on the educational front was overturned. The Minute of the National Educational Work Conference in 1971 was rescinded.

Third, the convictions and cases all over the country during the Cultural Revolution were reexamined and reversed. The CPC Central Committee reversed the wrong verdict on the Tiananmen Incident of 1976 before reversing the verdicts of a wide range of unjust, falsified and wrong rulings in cases involving central and local authorities.

Fourth, miscarriages of justice involving counter-revolutionary cases and criminal cases during the Cultural Revolution were overturned. During the Cultural Revolution, a total of 23,921 cases led to capital sentences, 10,402 of which were counter-revolutionary cases. The reputations were restored to a group of outstanding Communist Party members, such as Zhang Zhixin and Shi Yunfeng, who had been killed as a result of their heroic struggle against Lin Biao and the Gang of Four. They were honored as "Fighters for Safeguarding Truth".

Fifth, non-communist public figures from various political movements who had been attacked, framed and persecuted in the history of the Party, during the Cultural Revolution in particular, were rehabilitated. During the three years from 1979 to 1982, a large number of renowned non-communist public figures, including Ma Yinchu, were rehabilitated. A memorial meeting was dedicated to the prominent democratic figures who had died with persecution. The miscarriages of justice for the military personnel of the Nationalist Army who had surrendered were rehabilitated. A total of 450,000 of them were honored with due entitlements.

Sixth, unjust and falsified cases preceding the Cultural Revolution were reversed, including the Hu Feng Counterrevolutionary Group of 1955, the crackdown on Qinghai rebellion in 1958, and the third enlarged meeting of the Party leading group of the All-China Federation of Trade Unions. On that basis, the unjust and falsified cases from the 1930s and

1940s were also reexamined and rectified.

By the end of 1982, the nationwide mass rehabilitation campaign was basically complete. The rectification of more than 30 cases had been ratified by the CPC Central Committee. During that period, 3 million officials were rehabilitated all over the country, and more than 470,000 Party members who had been victims of miscarriages of justice were restored to Party membership. Tens of millions of officials and ordinary people who had been affected were freed. Since the end of the Cultural Revolution, about 1.1 million miscarriages of justice had been reversed, involving 399,000 cases by public security bureaus, 402,000 cases by people's procuratorates, and 301,700 cases by people's courts.

On January 11, 1979, the CPC Central Committee made a decision on the status of landlords, rich peasants and their children, which stated that the landlords, rich peasants and their family members who have followed orders, worked hard, and quitted wrongdoing, and the counter-revolutionaries and evildoers, who have passed the evaluation of the people, should have their status restored and be treated the same as other commune members, with the approval by the county revolutionary committee.

On July 13, 1979, the CPC Central Committee issued a circular stating that those who had been prosecuted as Rightists or wrongdoers due to reporting facts or voicing differences with the Anti-Rightist Campaign since 1959 should be rehabilitated.

On May 15, 1980, the CPC Central Committee Secretariat issued a directive on how to deal with the officials who had committed wrongdoings in the involvement of the PLA in the Cultural Revolution, stating that under the historical conditions of the Cultural Revolution, it was inevitable that some PLA men had made mistakes in their work. These mistakes should be studied from a historical perspective combined with personal reflection. As a result, the relevant issues were dealt with cau-

tiously all over the country.

From 1980 to 1981, the CPC Central Committee Secretariat held meetings in the provinces and autonomous regions of Yunnan, Tibet, Xinjiang and Inner Mongolia to implement the Party's policies concerning ethnic groups. The central and local governments overturned miscarriages of justice imposed on "local nationalists" [independence advocates].

In March 1982, the CPC Central Committee Secretariat issued a document on religious affairs of the socialist period, which defined the clear views and basic policies of the Party on religious affairs. As a result, the activities of patriotic religious organizations all over the country were resumed, temples and mosques in various places were repaired and reopened, and the Party's policy on religion was restored.

Chapter 24. Restoration and Reconstruction

During the Cultural Revolution, due to the explicit campaign to abolish public security, procuratorial organs and people's courts, the existing legal institutions were completely destroyed and the Supreme People's Procuratorate and Ministry of Justice were abolished. After the end of the Cultural Revolution, the reconstruction of the rule of law in China had to start with the reestablishment of legal institutions.

China originally established its institution of the people's procuratorates based on the Soviet Union model. After decades of development, the people's procuratorates have become an important part of judicial organ of China. Along with the people's courts, they constitute the judicial establishment of the State. According to the 1982 Constitution, the people's procuratorates are important legal supervision organs in China with important judicial tasks.

However, on August 10, 1966, the Supreme People's Procuratorate set up the preparatory committee of the Cultural Revolutionary Committee. On September 3, the Cultural Revolutionary Committee was formally established. On December 18, Jiang Qing [Mao's wife] had a meeting with the Red Guards, when she stated that "The ministry of public security, supreme people's procuratorate and supreme people's court were all borrowed from capitalist countries and were the bureaucracy that had overruled the Party and the State and confronted Chairman Mao for years." Her statement led to organized violent attacks on the Supreme People's Procuratorate by the Red Guards, which rapidly spread to the procuratorial organs at all levels throughout the country. In 1967, Xie Fuzhi, Minister of Public Security, suggested at the general assembly of his ministry that the organs of public security, procuratorate and people's

court should be smashed in theory and in organization.

On March 20, 1968, the CPC Central Committee, the Central Military Commission and the Central Leading Group of Cultural Revolution issued a circular stating that resident military representatives of the PLA should be dispatched to the Supreme People's Procuratorate. Military representatives were then dispatched to the procuratorial organs throughout the country. The procuratorial officials were sent to the countryside for farm work. In the first half of 1968, the law enforcement organs were seriously damaged, the procuratorial institutions were destroyed, and procuratorial work was halted nationwide. In December 1968, the military representatives at the Supreme People's Procuratorate, the Supreme People's Court and the Ministry of Interior along with the leading group of the Ministry of Public Security jointly filed a proposal on the revocation of the Supreme People's Procuratorate, the Ministry of Interior and its office. They also suggested that a limited number of officials remain in their posts in the Ministry of Public Security and the Supreme People's Court. The proposal was approved by Mao Zedong for circulation and implementation. The procuratorial organs throughout the country were successively abolished.

According to historical materials, more than 160 officials and staff of the Supreme People's Procuratorate, led by the military representatives and the provisional revolutionary leading group, went to the Shayang rehabilitation farm in Hubei province to undergo tempering on February 27, 1969. This farm became the May Seventh Cadre School (cadre schools founded in the countryside during the Cultural Revolution in accordance with Mao Zedong's May Seventh Directive) of the Supreme People's Procuratorate.

On October 4, 1973, the military representative office of the Supreme People's Procuratorate was abolished. Most of the officials in the school were relocated, and the school was suspended. The Supreme Peo-

ple's Procuratorate set up a care-taking group in Beijing.

On January 17, 1975, the Fourth National People's Congress adopted the 1975 Constitution. Article 25 of the Constitution stipulated that "The power of procuratorial organs shall be exercised by public security organs at all levels," meaning that the Constitution confirmed the abolition of the people's procuratorial organs. On March 5, 1978, the 5th National People's Congress adopted the 1978 Constitution, which re-established the people's procuratorates. By the end of 1979, the procuratorial organs at all levels in the country were basically reestablished.

The Ministry of Justice experienced the same fate as the people's procuratorates. From July to August, 1958, the Central Leading Group for Political and Legal Affairs convened the fourth national judicial work conference to sum up the political and legal work in the last nine years since the founding of the People's Republic.

The conference was actually intended to criticize and prosecute the "error in the political line" committed by the leading Party members' group of the Ministry of Justice.

The conference lasted more than 50 days and accused the six members of the leading group and three director-generals of the Ministry of being an "Anti-Party Clique". They were accused of four major crimes: "Opposing the dictatorship of the proletariat", "Opposing the Party's leadership of judicial work", "Adhering to the old viewpoints" and "Harboring the Rightists".

On April 28, 1959, the State Council filed the proposal to dissolve the Ministry of Justice with the National People's Congress. The proposal noted that "The Ministry of Justice has done a lot of work on judicial reform, establishing the people's courts and cultivating law enforcement officials in recent years. Now that the judicial reform has been basically completed, with the people's courts at all levels having been established, the officials of the people's courts having been appointed and reinforced,

it is no longer necessary to have the separate establishment of the Ministry of Justice. It is recommended that the Ministry of Justice be dissolved, and its functions be taken over by the Supreme People's Court."

In September 1979, the Standing Committee of the 5th National People's Congress adopted the resolution to re-establish the Ministry of Justice. By the end of 1980, the judicial organs at national and subnational levels were fully restored. The 1982 Constitution stipulated that the State Council administer the work of judicial administration, which determined the legal status of judicial administration.

With the restoration of the Ministry of Justice, the lawyers' system in the Chinese mainland was also restored. In December 1979, the Ministry of Justice issued a circular on the work of lawyers, resuming the lawyers' system. In August 1980, the Standing Committee of the 5th National People's Congress adopted the Provisional Regulations on Lawyers, which was the first ever legislation on the lawyers' system in the People's Republic of China.

Chapter 25. Seven Laws

Legislation, law enforcement, justice and observance are the four major links in the rule of law. Legislation is of prime importance for the rule of law. In order to meet with the requirements of the rule of law, under the CPC's leadership, China launched a new round of legislation, which laid new foundations and opened up new pathway for the rule of law.

On December 22, 1978, the Third Plenary Session of the 11th CPC Central Committee drew to a close. Six days later, on December 28, a large group of officials gathered at the Capital International Airport to welcome Peng Zhen, the first Party secretary of Beijing Municipal CPC Committee, who had been imprisoned for nine years and exiled for another three years. He was among the first group of senior officials to have been denounced with the beginning of the Cultural Revolution.

After returning to Beijing, Peng Zhen was reappointed to the office for legislative affairs at the NPC Standing Committee. Under his leadership, the NPC accelerated its work on legislation. In July 1979, the Second Plenary Session of the 5th National People's Congress adopted seven laws – the Criminal Law, Criminal Procedure Law, Electoral Law of the National People's Congress and Local People's Congresses, Organic Law of the Local People's Congresses and Local People's Governments, Organic Law of the People's Courts, Organic Law of the People's Procuratorates, and Law on Chinese-Foreign Equity Joint Ventures, marking the beginning of large-scale legislation work in the new period.

The seven laws were of great significance. In particular, the Criminal Law and the Criminal Procedure Law had a significant impact on the process of penalizing crimes in accordance with the law and protecting the

legitimate rights and interests of the state and the people. It represented the end of the disorganized rulings over discretionary accusations during the Cultural Revolution, and another step forward on China's path to the rule of law. The adoption of the organic laws and the electoral laws established the legal standards for building the subnational legislatures and administrative organs, which had a profound impact on the succeeding subnational legislative and administrative work. The Law on Chinese-Foreign Equity Joint Ventures was the first law that legally enabled China's opening up and served as a key symbol of this change. It gave the world a window on China's confidence and determination to go global and embrace the world.

Many other laws and legal documents of legislative nature were adopted by the national legislature in 1979, including the Forest Law of the People's Republic of China (Trial); Regulation on Arrest and Detention; The Environmental Protection Law (Trial); Resolution on Amending Certain Provisions of the Constitution of the People's Republic of China; Resolution on Adopting the Supplementary Provisions on Labor Re-education of the State Council; Resolution on the Establishment of Standing Committees of the Subnational People's Congresses and Turning Revolutionary Committees into People's Governments in 1979; Resolution on the Binding Force of the Laws and Decrees of the People's Republic of China since Its Founding. In that era, the legislative output of the National People's Congress and its Standing Committee was:

In 1980, 13 items of legislation – 9 laws and 4 decisions on legal issues.

In 1981, 12 items of legislation – 5 laws and 8 regulations on legal issues.

In 1982, 21 items of legislation – 1 constitution, 10 laws, and 10 regulations on legal issues.

In 1983, 16 items of legislation – 6 laws and 10 regulations on legal issues.

In 1984, 11 items of legislation – 8 laws and 3 regulations on legal issues.

In 1985, 12 items of legislation – 8 laws and 4 regulations on legal issues.

In 1986, 15 items of legislation – 13 laws and 2 regulations on legal issues.

In 1987, 13 items of legislation – 7 laws and 6 regulations on legal issues.

In 1988, 23 items of legislation – 1 constitutional amendment, 10 laws, and 12 regulations on legal issues.

From then on, legislation in China made rapid progress. In March 2011, the Standing Committee of the 11th NPC declared that a legal system with Chinese characteristics had been in place.

Chapter 26. Rescission of Party Committees' Approval of Court Rulings

The promulgation of laws such as the Criminal Law and the Criminal Procedure Law of the People's Republic of China opened up a new chapter in the legislative history of China. The formulation and promulgation of these two laws became a prominent symbol of the development of the rule of law in China.

In order to ensure the smooth implementation of the two laws, the CPC Central Committee issued the Directive on the Practical Implementation of the Criminal Law and Criminal Procedure Law (Ref. No. Zhongfa [1979] 64, September 9, 1979). The directive put forward clear requirements of the rule of law for the Party committees and leading Party members' groups of the provinces, municipalities and autonomous regions, major military regions, provincial military regions, field armies, central and state organs, headquarters of the Central Military Commission, branches of the armed forces, and people's organizations. Some of the main requirements were as follows:

"Seven important laws, including the Criminal Law and the Criminal Procedure Law, unanimously adopted at the Second Plenary Session of the 5th National People's Congress, had won enthusiastic support from the whole country. What everyone is most concerned about now is whether we can resolutely implement these laws. Among the seven important laws, the criminal law and the criminal procedure law are closely related to the daily interests of the people of the country. The extent to which they can be strictly enforced will be an important indicator of the extent to which China has achieved socialist rule of law. Therefore it is a matter of great concern to the whole country.

All Party committees, leading Party officials and Party members at all levels must fully understand that this is a big issue directly related to the credibility of the Party and the State. Only when there are laws to go by, that these laws are observed and strictly enforced, and that lawbreakers are prosecuted can the normal order of daily life be safeguarded, and political stability and unity be boosted. That is also how we can give full play to the strengths of our socialist system, consolidate the dictatorship of the proletariat, mobilize all positive factors, centralize the wisdom and strength of the Chinese people, and facilitate the smooth advance of the socialist modernization drive.

"We should strictly observe the criminal law and the criminal procedure law and firmly challenge and rectify any tendency of violation.

"The judicial organs at all levels must try the criminal cases in accordance with laws and facts, take the law as the criterion, conduct objective analysis and make accurate judgment in accordance with the law. The verdict of guilty or not guilty shall be strictly judged and correctly ruled. No case shall be taken for granted and no ruling shall be given in a hustle when it is hard to draw a clear line of guilty or not guilty.

"No matter how special a defendant is in terms of socio-political standing, social identity and political career, whether the defendant has committed a crime or not, whether it is a contradiction between ourselves and the enemy or not, the law must be equally applied to all. This is what equality before the law is about. No organization or individual other than law enforcement organs is entitled to arrest or detention, court trial, private trial, personal freedom restriction and civil right deprivation. Nor is it acceptable to order law enforcement organs with any excuse to arrest without following the provisions and procedures of the criminal law, or disregard the law and rule the case discretionally, severely or leniently. The law enforcement organs are strictly forbidden to use personal insult, corporal punishment and torture to treat offenders, detainees and per-

sons arrested or in custody. On depriving political rights of the persons sentenced in accordance with the law, it depends on different scenarios to decide whether the deprivation should be partial or full or how long the deprivation should last.

“To punish the violations of Party discipline, political discipline and other disciplines, we must strictly follow the relevant regulations. The criminal law shall never be misapplied to those who has not violated it. Those who have violated intra-Party disciplines can only be penalized to the extent of being expelled out of the Party.

“In the future, one important rule for strengthening the Party’s leadership over the judicial work is to ensure real implementation of the law, give full play to the role of the judiciary, and ensure that the people’s procuratorates independently exercise power and the people’s courts independently exercise jurisdiction, free from administrative intervention. The national law was enacted under the Party’s leadership, and the judicial organs were established under the Party’s leadership. Anyone who disregards the authority of the law and the judiciary undermines the Party’s leadership and the Party’s authority in the first place. The judicial organs and the Party committees have separate functions that cannot replace each other. Their functions shall not be mixed or misapplied. To this end, the CPC central leadership has decided to abolish the system that all case rulings be reviewed and approved by the Party committees at all levels. For the criminal cases of officials at or above county level and of public figures, except for a limited number of cases that must be reported to higher-level authorities, they shall be independently tried in accordance with the law by local judiciaries. The verdicts and rulings of judiciaries must be resolutely enforced by relevant organizations and individuals. If they disagree, the appeals should be filed in accordance with procedures and be accepted by the responsible judicial organ. Public security organs at all levels must resolutely be subordinate to the Party’s

leadership, yet when it comes to exercising the functions conferred by law, they must strictly abide by the law, and the two shall never contradict with each other. The idea that submission to the Party’s leadership means entitlement to violating the law is extremely wrong and must be corrected resolutely. The Party’s organizations, leading officials and Party members at all levels must take the lead in abiding by the law.”

“We must adhere to the principle that all shall be treated as equals before the law. There shall not be any special citizen who shall not be bound by the law. There shall not be any privilege that overrides the law. All Party members, especially leading Party officials at all levels, must learn the law, understand the law, and take the lead in observing the law.

“The implementation of the law is consistent with the implementation of the Party’s guidelines, principles and policies. In the future, the resolutions and directives of the Party organizations at all levels must be conducive to the enforcement of the law, rather than contradicting the law. If the contents of certain laws are no longer relevant with the situation, they should be revised through legal procedures.”

These directives remain significant even today when China is promoting law-based governance. Revisiting them leads us to truly admire the legal talent of the prominent leaders of that time. The rescission of Party Committees’ approval of court rulings has undoubtedly cleared the obstacles and broadened the horizon on advancing the rule of law in China.

Chapter 27. The Historic Trial

On the morning of January 25, 1981, the Special Court of the Supreme People's Court reopened after an adjournment. After reading the court verdict, Jiang Hua, the head of the Special Court, solemnly announced:

"Escort Zhang Chunqiao, Yao Wenyuan, Wang Hongwen, Chen Boda, Huang Yongsheng, Wu Faxian, Li Zuopeng, Qiu Huizuo, Jiang Tengjiao from the court and hand them over to law enforcement."

"The Supreme People's Court Special Court now draws to a close."

With this pronouncement, the centennial trial that had captured the attention of the entire world, came to an end.

On September 29, 1980, the Sixteenth Session of the 5th NPC Standing Committee adopted the Resolution on the Establishment of Special Prosecutor's Office of Supreme People's Procuratorate and Special Court of Supreme People's Court for Prosecutorial and Trial of the counter-revolutionary Lin Biao and Jiang Qing cliques. The session appointed Huang Huoqing as director of the Special Procuratorate of Supreme People's Procuratorate, Jiang Hua as president of the Special Court of Supreme People's Court, Zeng Hanzhou as judge of the first trial court, and Wu Xiuquan as judge of the second trial court. The ruling of the Special Court would be final.

The Special Court heard evidence and held discussions during the trial from November 20 to December 29. Procurator Huang Huoqing presented the four felonies of the ten mastermind defendants of the counter-revolutionary Lin Biao and Jiang Qing cliques in the court indictment:

1. Framed and persecuted Party and state leaders and conspired to

overthrow the regime of the dictatorship of the proletariat;

2. Persecuted and suppressed a large numbers of officials and ordinary people;

3. Attempted murder of Mao Zedong and plotted a counter-revolutionary armed coup;

4. Instigated a reactionary armed riot in Shanghai.

During the two months and five days of the trial, the Special Court conducted 42 hearings and debates. A total of 49 witnesses and victims appeared in court to testify, and 873 pieces of evidence were examined. The examination of a large amount of physical evidence, documentary evidence, judicial credentials, witnesses' testimonies and victims' statements led to the conclusion that the accusations leveled at the counter-revolutionary Lin Biao and Jiang Qing cliques were justified by clear facts and truthful evidence.

The event was aired live by China Central Television.

On the morning of January 25, 1981, President Jiang Hua of the Special Court announced the verdict:

The 10 defendants were identified as the prime culprits in the case and sentenced:

Jiang Qing and Zhang Chunqiao to the death penalty, with a two-year reprieve and lifetime deprivation of political rights;

Wang Hongwen to lifetime imprisonment with lifetime deprivation of political rights;

Yao Wenyuan to 20-year imprisonment with 5-year deprivation of political rights;

Chen Boda to 18-year imprisonment with 5-year deprivation of political rights;

Huang Yongsheng to 18-year imprisonment with 5-year deprivation of political rights;

Wu Faxian to 17-year imprisonment with 5-year deprivation of polit-

ical rights;

Li Zuopeng to 17-year imprisonment with 5-year deprivation of political rights;

Qiu Huizuo to 16-year imprisonment with 5-year deprivation of political rights;

Jiang Tengjiao to 18-year imprisonment with 5-year deprivation of political rights.

The two cliques behind the Cultural Revolution paid the price for their misdeeds.

On that day, Xinhua News Agency aired a long editorial titled "The Historic Trial":

"At 09:18 Beijing time on January 25, 1981 comes a solemn moment. After a trial lasting more than two months, the Special Court of the Supreme People's Court of the People's Republic of China announced its final judgment regarding the 10 prime culprits in the case of counter-revolutionary Lin Biao and Jiang Qing cliques. A group of counter-revolutionary criminals who conspired to subvert the socialist system have finally been brought to justice by socialist rule of law. A group of ambitious adventurists who attempted to change the course of human history were destined to be judged by history.

"Anyone who suffered under the decade of havoc will never forget how badly our motherland was ravaged by Lin Biao and the Gang of Four. That was a dreadful period. As in a scene from mythology, a blue cloud emanating from a copper bottle was transformed into a group of demons. Several actors long-concealed among the revolutionary troops and decorated in bright colors ascended to the throne of power and became a one-minded behemoth that was able to manipulate a great nation. They abused the communication channels of the Party and the State to issue orders to the entire nation, and initiated millions of Red Guards into the worship of a religious-like personality cult. They dared to wave

the little Red Books and wrought havoc with the Constitution, even enshrining their names therein. They thought they could reset the power hierarchy and manipulate the people's future. But they never dreamed from the first day of their drive for power that they would ultimately fail and face the justice of history.

"Lin Biao and the Gang of Four abused the discarded feudal autocracy and took advantage of modern superstition as the source of their survival and growth. They deceitfully used the ideology of proletarian revolution as a political tool to promote feudal totalitarianism. They abused the people's reverence for the great leader to nurture modern superstition. They wrote off the merits and bloodshed of countless martyrs and incarnated the great leader revered by the people as a 'Godfather created by history once every hundred or thousand years'.

"In those days, they forced the nationwide spread of funny personality cult for Mao Zedong forged by the Lin Biao and Jiang Qing cliques. Peasants were required to bow toward the sky in the east and factory workers were required to salute the portrait of Chairman Mao every day. The choreographed rituals of daily reporting to Mao – like atheists at prayer – could be seen everywhere around the country, in schools, government departments, hospitals and even aboard airplanes in the sky.

"More than 100,000 people were arrested and convicted on falsified criminal charges based on innocent conversations that were literally re-interpreted as personal attacks on the officials of the Lin Biao and Jiang Qing cliques. In Shanghai alone, the Gang of Four's primary base, there were 249,000 wrong cases in the name of 'attacking the Central Cultural Revolution Leading Group', and more than one million innocent people were prosecuted in connection with those cases. In this decade of havoc, the personality cult movement launched by the Gang of Four, like a cyclone striking our land, destroyed countless families and snuffed out countless innocent lives. Our interviews all over the country have re-

vealed that the total number of such bizarre cases runs into the tens of millions.

“What kind of thorns, pitfalls and barriers can ever stop the advance of a nation that has long endured woes and calamities? The forces that have never forgotten suffering and humiliation will be invincible in the face of any challenge!”

Chapter 28. The 1982 Constitution

“All should be equal before the law”, suggested Mr. Li from Beijing;

“All should be equal before the law (truth) and no one should be entitled to special treatment”, suggested Mr. Liu from Hebei;

“Life-long tenure office of leaders should be abolished”, suggested Mr. Liang from Guangdong.

....

The above are excerpts from the suggestions of the public on the amendments to the 1982 Constitution.

On April 26, 1982, the Twenty-third Session of the 5th NPC Standing Committee adopted the Resolution on Promulgating the Draft Amendments to the Constitution. In accordance with the spirit of the Resolution, the NPC Standing Committee announced the draft Amendments to the Constitution to the public, delivered it to the public for consultation, and solicited suggestions and comments from the public throughout the country.

Professor Xu Chongde, a renowned Chinese scholar and professor of constitutional law at Renmin University of China, recalled that hundreds of millions of people participated in the popular discussion. The solicitations lasted four months, one month longer than for the 1954 Constitution, with unparalleled and enthusiastic participation of the people. A total of 2,286 seminars were held in Guizhou Province alone.

Xu believes that the 1982 Constitution amendments received the most public participation since the founding of the People's Republic of China. In his book *The History of the Constitution of the People's Republic of China*, he noted: “In addition to the letters and comments collected by the authorities, many were mailed by individuals. I remember a mail from

Yang Shangkui, who later served as the Party secretary of Jiangxi Provincial CPC Committee, which was neatly written with a brush pen.”

When the draft was being sent to the National People's Congress for review, Wang Yinxiang, a worker in Inner Mongolia, wrote a letter to the National People's Congress and made four suggestions on land use. After the letter was mailed, he was worried that the mail was too slow and he might miss the review deadline. The following day, he rushed to the post office and sent a telegram containing nearly 200 words of suggestions at a cost of a quarter of his salary. The NPC Constitution Working Group decided to adopt one of Wang's suggestions and changed Article 9.2 from “The state guarantees reasonable use of natural resources” to “The state guarantees rational use of natural resources and land.”

Following discussions, 91 units from the central and state departments, the People's Liberation Army, various democratic parties and people's organizations reported their opinions, and 29 provinces, autonomous regions, and municipalities submitted two batches of collective materials. The Secretariat of the Constitutional Amendment Committee compiled the opinions of all parties into volumes and circulated them to the members of the committee. Based on these opinions, the Secretariat carefully revised the draft amendments and made nearly 100 additions or revisions.

In 1954, the inauguration session of the National People's Congress adopted the first constitution of the People's Republic of China. In 1975, China's second constitution was enacted. In 1976 when the Cultural Revolution finally came to an end, China started to work on amendments to the constitution. The third constitution of the People's Republic of China, the 1978 Constitution was enacted. In December 1978, immediately after the closing of the Third Plenary Session of the 11th CPC Central Committee, the Chinese Communist Party completely rejected the Cultural Revolution and set about restoring order.

Looking back, the third constitution was severely influenced by or even embodied the lingering ideology of the Cultural Revolution. To this end, the bill of constitution amendments was adopted again.

After deliberation, Peng Zhen reported to the Fifth Session of the 5th National People's Congress on the draft amendments of the constitution. On December 4, 1982, the 1982 Constitution was adopted by the NPC through a secret ballot of 3,040 delegates, of whom 3,037 voted in favor, 3 abstained, and none voted against.

The press immediately reported the figures to the public. That was the first time that the Chinese legislature had made a ballot count open to the public. The legislation was then enacted by the National People's Congress. That was how the 1982 Constitution, the fourth of the People's Republic of China, was born. It is also the constitution that is still enforced in China today.

The 1982 Constitution had four chapters and 138 articles, the product of major amendments to the previous constitution. These amendments include: the state system was changed from “the dictatorship of the proletariat” back to “people's democratic dictatorship”; intellectuals, workers and peasants were defined as three basic components of social fabric; the Office of President was reestablished; the chairman of the Central Military Commission should be elected by the National People's Congress; the State Council implements the prime minister's responsibility system; the new statement that “the personal dignity of citizens is protected from being infringed”; national, collective and private ownership are recognized as indispensable components of national economy, and the state's protection of legitimate rights and interests of private-owned economy was reaffirmed.

The 1982 Constitution re-confirmed people's democratic dictatorship, reaffirmed the status of intellectuals and recognized the private economy, which opened up a new path for the democratic and institutionalized rule

of law of Chinese politics.

In his speech at the 30th anniversary of the Constitution on December 4, 2012, General Secretary Xi Jinping stated: “The Constitution has fully proved over the past 30 years that it is a good Constitution that suits China’s national conditions and reality, and the requirements of the times; that it is a cogent Constitution that demonstrates the common will of the people, safeguards their right to democracy, and protects their fundamental interests; that it is a vigorous Constitution that promotes national development and progress, guarantees a happy life for the people, and ensures that the Chinese nation achieves its great rejuvenation; and that it is the fundamental legal guarantee enabling our country and people to pass through all difficulties, risks and tests and to forge ahead along the socialist path with Chinese characteristics.”

Chapter 29. Legal Awareness Campaign

On December 4, 2015, Shanghai residents were amazed by the Special Constitution Train running on subway Line 7 with constitution-themed patterns and text painted in bright colors, which captured the attention of many passengers. That was part of a series of publicity campaigns on the National Constitution Day launched by Shanghai to give the 10 million passengers on Shanghai rail transit lines exposure to legal culture in their everyday commuting.

The 6th Five-Year Legal Awareness Campaign was scheduled from 2010 to 2015, during which Guangxi established 13,459 contact points for officials studying and enforcing the law, which boosted the legal awareness of the whole society. Tianjin set up an online legal studies test system in which more than 33,000 officials at city level or above participated. The All-China Women’s Federation delivered legal counselling to families in more than 700,000 Women’s Homes to promote rule of law and safeguard women’s rights.

According to the work report of Supreme People’s Court in 2015, as of February of that year, 130,000 trials, including the trial of the Qvod Player (Kuaibo) case, were aired live, which attracted extensive attention and discussion on legal issues among the public.

By April 2015, more than 3,700 legal awareness websites and more than 2,600 microblog and WeChat accounts to promote legal awareness had been registered in China. Regular playing of animated videos and micro-movies of legal cases were organized with annual participants of 100 million.

In January 2016, the Central Leading Group for Comprehensively Deepening Reforms reviewed and ratified the Opinions on Improving

the System of Study and Use of the Law of Staff Members in State Organs jointly formulated by the Central Department of Organization, Central Department of Publicity, Ministry of Justice, and Ministry of Human Resources and Social Security to initiate and standardize long-term study and application of the law, and encourage government staff to take the lead in respecting, observing and applying the law.

The above are extracts I took from media reports of the Sixth Five-Year Legal Awareness Campaign. This work has continued for more than 30 years in China and is now in full swing.

The legal awareness campaign in China is unique. The phrase means “publicizing a common sense of law” or “promoting understanding of the law”.

From June 9 to 15, 1985, the Central Department of Publicity and the Ministry of Justice jointly held a national conference on the publicity and education in law in Beijing. That was the first ever national conference in China devoted to promoting legal publicity and education.

In November 1985, the Ministry of Justice submitted the draft of the First Five-Year Plan of Legal Awareness to the 13th meeting of the Sixth NPC Standing Committee. After that, the Central Committee of the Communist Party of China and the State Council circulated the Five-Year Plan of Legal Literacy for All Citizens issued by the Central Department of Publicity and the Ministry of Justice (Ref. No. 23 [1985]). That was the beginning of the sustained legal awareness campaign. It was a journey of 30 years from 1985 to 2015 when the Sixth Five-Year Plan of Legal Awareness ended. The year 2016 saw the start of the seventh five-year plan, which is now proceeding all over China in an orderly manner.

Chapter 30. Legal System Study Sessions at Zhongnanhai

The First Five-Year Plan of Legal Awareness started in 1986. Justice Minister Zou Yu wrote to General Secretary Hu Yaobang, suggesting that the work should be led by leaders, first of all by the leaders of the CPC central committee. He suggested that members of the Political Bureau and Secretariat should set an example by attending legal system study sessions. Hu Yaobang actively supported the suggestions and referred the letter with his comments to Hu Qili, member of the Secretariat of the CPC Central Committee. In less than one week, Hu Qili scheduled the study sessions and made appointments with the lecturers, who were:

Sun Guohua, adjunct professor of Renmin University;

Zhang Jinpan, dean of the graduate school of China University of Political Science and Law;

Wang Houli, director of Treaty and Law of the Ministry of Foreign Affairs;

Jiang Ping, professor of China University of Political Science and Law.

At 09:00 on July 3, 1986, a legal system study session took place in the small auditorium of Zhongnanhai. The event was presided over by Hu Qili. At the beginning of the session, Hu Qili conveyed Deng Xiaoping's comments on strengthening the legal system when he was reported on improving conduct and correcting malpractices of the Party at the Political Bureau Standing Committee of the CPC Central Committee on June 28. After that, Sun Guohua delivered his lecture on the performance and function of the Law.

Hu Yaobang insisted that Sun Guohua be seated in the chair's seat for his lecture, saying that "The teacher deserves the chair's seat". After the lecture, Sun Guohua was invited to join Wen Jiabao, Wang Zhaoguo and Minister Zou Yu for a working luncheon.

The members of the Political Bureau and the Secretariat of the CPC Central Committee who attended the lectures included Hu Yaobang, Zhao Ziyang, Fang Yi, Tian Jiyun, Qiao Shi, Li Peng, Hu Qiaomu, Hu Qili, Yao Yilin, Chen Muhua, Chen Peixian and Wang Zhaoguo. Chiefs of the CPC Central Commission for Discipline Inspection, the General Office of CPC Central Committee, the Central Political and Legal Authorities, the Central Department of Publicity and CPC Beijing Municipal Committee also attended the lectures.

On August 28, 1986, Zhang Jinfan delivered a lecture on the experience of the legal system in Chinese history. The third lecture was given by Wang Houli on diplomacy and international law. The fourth lecture was given by Jiang Ping on economic development and legal system development. Lectures on the legal system for the Political Bureau would go on to become a tradition over time.

After 1989, the CPC Central Committee organized special legal system study sessions.

On December 9, 1994, a new round of legal system lectures took place in Zhongnanhai.

That was the first legal system lecture given to the CPC Central Committee since the 14th CPC National Congress. Cao Jianming, 39, professor of East China University of Political Science and Law, gave a lecture on international trade legal system and GATT. On May 6, 1997, before the return of Hong Kong to China, Wu Jianwei, researcher at the Institute of Law of the Chinese Academy of Social Sciences, gave a lecture on "One Country, Two Systems" and the Hong Kong Basic Law.

From December 1994 to October 2002, before the 16th CPC Na-

tional Congress, the CPC Central Committee held 12 legal system study sessions on topics ranging from international trade law, international law to financial security and social security.

In the second half of 2002, the 16th CPC National Congress was held. On December 26, General Secretary Hu Jintao presided over the first study session of the new Political Bureau in Zhongnanhai, where Professor Xu Chongde of Renmin University and Professor Zhou Yezhong of Wuhan University gave lectures on the Constitution.

From the first study session in December 2002 to the opening of the 18th CPC National Congress in 2012, the 16th and 17th CPC Central Political Bureau organized 77 study sessions, including 9 legal system sessions.

I had the privilege to give a lecture on scientific democratic and law-based governance along with Professor Zhang Zhiming at a study session of the 16th CPC Central Committee on June 29, 2006. On March 28, 2011, along with Professor Hu Jianwei, I delivered a lecture on law-based administration and the socialist rule of law at a study session of the 17th CPC Central Committee. I feel very honored that I have been twice invited to give lectures to the leaders of the Party and state in Zhongnanhai. But what is more gratifying is that the rule of law has finally become a universal theme that is ranked high on the agenda of our time by civil society and the political leaders of China.

One hundred years ago, jurists had already been invited into Zhongnanhai to promote the rule of law in China. Archives indicate that statesmen of the late Qing Dynasty had attended legal system lectures. Before the five senior officials' overseas trip to Europe and America, they attended a presentation on constitutional monarchy by Hunan Governor Duan Fang.

Chapter 31. Rectifying Wrongful Convictions

She Xianglin, a farmer of Hechang village in Hubei province, was a security guard hired by the local police.

On January 20, 1994, Zhang Zaiyu, She Xianglin's wife, went missing. Zhang's relatives suspected that she had been killed by She Xianglin. In April, an unidentified female corpse was discovered in another village, which was believed to be Zhang. Zhang's relatives confirmed that features of the deceased matched Zhang. A case for criminal investigation was filed by the local public security bureau, confirming that the deceased was Zhang. She Xianglin was detained. His arrest was then authorized by the local people's procuratorate. On October 13, the Jingzhou Intermediate People's Court issued a first-instance judgment: She Xianglin should be sentenced to death for deliberate murder and deprived of political rights for life.

On January 10, 1995, She Xianglin appealed to the Higher People's Court of Hubei Province. After the hearing, the first-instance judgment was revoked and the case was sent back for retrial. The Jingzhou court authorized Jingshan county court to conduct the retrial.

On June 15, 1998, Jingshan county court ruled that She Xianglin was guilty of intentional homicide. He was sentenced to 15 years imprisonment with deprivation of political rights for 5 years. She Xianglin contested the verdict and filed an appeal with the upper level court. On September 22, upper level court dismissed the appeal and upheld the original ruling. He was sent to Hubei Shayang Prison.

On March 28, 2005, Zhang Zaiyu, She Xianglin's wife who had been declared dead for 11 years, returned home suddenly. The local judiciary confirmed that she was indeed the person who had been declared dead

11 years ago. On April 1, She Xianglin was discharged from prison. Jingshan county court overturned the original judgment and ruled Xianglin not guilty on April 13.

In October 2005, She Xianglin and his family filed a claim for a state compensation of 10 million yuan on the grounds of false imprisonment for 11 years. The court heard his case and ruled that he should get a state compensation of 700,000 yuan.

After the retrial, the local intermediate people's court drew a key lesson from the case – that judicial power must be exercised independently in accordance with the law, and that there must be no obstruction and interference. The original verdict was the result of the courts at county and city levels acting on the instructions of political and legal authorities. This practice of court trials submitting to administrative power violated the Criminal Procedure Law and was the root cause of the wrongful ruling. The courts and judicial organs must strictly implement the law and conduct independent trials in accordance with the law even in the face of obstruction by the authorities.

The judge on the case explained later that when it was originally heard in 1994, they felt that the case should be suspended due to lack of evidence. The courts didn't make their judgments until 1998, when the Party's political and legal affairs commission intervened.

It was a pity that no proper forensic inspection on the corpse had been conducted, because "She Xiangling was believed to have killed, and the corpse was his wife" [a conclusion drawn before the trial].

After rectification of the case, Professor Ma Kechang of Wuhan University, an eminent criminal jurist in China, said that the use of torture was often the prime cause of miscarriages of justice in criminal cases. Moreover, interventions by political and legal affairs commissions or government departments often resulted in malfunctions of the judicial supervision mechanism. Trials were not being conducted in strict accor-

dance with the law.

Fortunately, since the dawn of the 21st century, China has banned the use of torture and punished offenders forcefully. In the meantime, the Party committee's approval of judicial rulings had been rescinded.

Five years after the above case, a similar case – the Murder of Zhao Zuohai – occurred in Henan Province.

Zhao Zuohai, born in 1952, was a villager in Zhaolou village of Henan province. It is unlikely that this ordinary peasant ever imagined he would find himself embroiled in a sinister court case, and that he would eventually be acquitted and granted state compensation. His bitter experience resulted in a key phrase in the history of the rule of law in China – the Zhao Zuohai Case.

On October 30, 1997, Zhao Zuohai and another local man, Zhao Zhenxiang got into a fight. Subsequently, Zhao Zhenxiang disappeared. On February 15, 1998, Zhao Zhenxiang's nephew reported the case to the police, saying that his uncle had disappeared four months earlier after a fight with Zhao Zuohai. He suspected that Zhao Zuohai had killed his uncle. The local public immediately launched an investigation.

On May 8, 1999, it was reported to the local police that an unidentified corpse had been discovered in a well at Zhaolou village. The local police mistakenly concluded that the deceased was Zhao Zhenxiang. On May 9, Zhao Zuohai was arrested. During interrogation, he made nine confessions of guilt. The investigation was terminated and the case was handed over to the local people's procuratorate for prosecution.

After reviewing the case, Shangqiu People's Procuratorate indicted the defendant Zhao Zuohai for intentional homicide with Shangqiu Intermediate People's Court on October 22, 2002. After the trial, Shangqiu Intermediate People's Court made a first-instance ruling on December 5, sentencing Zhao Zuohai to death with a two-year reprieve, and lifetime deprivation of political rights for the crime of intentional homicide.

After reviewing the files, the Higher People's Court of Henan Province ratified this judgment on February 13, 2003.

On April 30, 2010, eight years after the incident, Zhao Zhenxiang returned to Zhaolou village. It was verified that the returnee was indeed Zhao Zhenxiang, the supposed murder victim. The victim had come back to life and returned to his home town, indicating that Zhao Zuohai had been wrongly convicted.

An investigation established that on the night of October 30, 1997, in his fight with Zhao Zuohai, Zhao Zhenxiang had taken a kitchen cleaver and struck on the head. Panicking that Zhao Zuohai might seek revenge, or that he might die, Zhao Zhenxiang packed his belongings and fled the next morning. Zhao Zhenxiang had no skills to live on, but earned his livelihood as a garbage-picker. As he got older, he suffered ill health and became partially paralyzed. He could not afford medical treatment, and was forced to return to his village. That was how the "murder victim" had come back to life.

The Higher People's Court of Henan Province decided on May 5, 2010 to grant a retrial. After the jury's deliberations, it was concluded that the conviction of Zhao Zuohai was wrongful. The previous decisions of the provincial court and the city court were overturned. Zhao Zuohai was pronounced innocent.

At a press conference on May 13, 2010, the Higher People's Court of Henan Province announced that a total of 650,000 Yuan had been granted to Zhao Zuohai in state compensation. The sum was handed to Zhao Zuohai by the dean of Shangqiu Intermediate People's Court on the spot.

Later, the law enforcement agency of the case publicly acknowledged that torture had been used in the original interrogations. The nine confessions of Zhao Zuohai had been obtained through torture. During the original trial Zhao Zuohai had complained that his confessions had

been forced by torture, but his complaint was ignored by the judge. Nor was his confession excluded as illegal evidence.

While the case was being rectified by the judiciary, the police had started to re-investigate the identity of the unknown corpse.

The media reported that an intensive investigation over 30 days by the local police had uncovered the truth about the corpse that had led to Zhao Zuohai's wrongful conviction. Three suspects and those who had harbored the criminals were arrested and brought to trial, and their criminal acts were proven with hard evidence.

Zhao Zuohai was rehabilitated, and the real culprits of the actual murder were brought to justice and sentenced accordingly. On the face of it peace and order had been restored to China's legal community, but the truth was quite different.

The Zhao Zuohai Case triggered extensive reflections on the use of torture in criminal interrogations, and on human rights protection in China, especially in the judicial community. Zhao Zuohai had been granted a state compensation, but the loss of freedom during his years of imprisonment, and the personal damage and mental disruption to his family could never be compensated.

Zhang Liyong, Dean of the Higher People's Court of Henan Province said with conviction: "During his 11 years of wrongful imprisonment, Zhao Zuohai lost not only his personal freedom, but also his opportunity to live his life and earn a living. He was mislabeled as murderer, which left his family broken. The fact that his four children grew up illiterate, because no one could pay for their education, had a disastrous impact on three generations. The wrongful conviction caused him and his relatives not only physical and economic loss, but also mental pain that can never be compensated or repaid."

Everyone hopes that miscarriages of justice like the Zhao Zuohai Case will never, ever happen again.

Chapter 32. One Country, Two Systems

Deng Xiaoping, a great name and a great man of the times.

"One Country, Two Systems" refers to the statement that one sovereign country implements two different systems. It is a political solution but also a legal principle, which was the brainchild of Deng Xiaoping. It has served as the key to the Hong Kong and Macau issues.

Deng Xiaoping passed away on February 19, 1997, less than 200 days before the return of Hong Kong to China. His wish to visit Hong Kong after the return, to set foot on what was once more the land of China, was never realized, but Hong Kong's return as planned was absolute and real. This manifested the victory of the "One Country, Two System" principle and the great success of The Basic Law of the Hong Kong Special Administrative Region.

When it comes to Hong Kong, the Chinese people have mixed feelings.

The Qing government was defeated in the first Opium War. On August 29, 1842, the Treaty of Nanking was signed with the British Government, ceding China's Hong Kong Island and Ap Lei Chau to the United Kingdom. In October 1860, during the Second Opium War, the Qing government was defeated again and was forced to sign the Treaty of Peking, which stated that the Kowloon Peninsula, a local district of Kowloon city, and Stonecutters Island would be handed over to and governed by the United Kingdom. In 1898, the Qing government and the British government signed the Convention Between Great Britain and China Respecting an Extension of Hong Kong Territory, which granted a lease over a total of 975.1 square kilometers of 230 islands of all sizes to the south of the Shenzhen River and the north of Boundary Street

that was called the New Territories, for a period of 99 years. It was validated on July 1, 1898 and expired on June 30, 1997. According to these unequal treaties, the Chinese territory of Hong Kong was occupied by the British.

In September 1982, the government of the People's Republic of China and the British government began negotiations on the future of Hong Kong. The government of the People's Republic of China refused to recognize the unequal treaties. In the view of the Chinese government, these areas were indeed managed by the British government, but they were not British territories. The British government must return Hong Kong Island and Kowloon together with the New Territories.

After two years and up to 22 rounds of negotiations, the Chinese and British sides finally signed the Sino-British Joint Declaration on December 19, 1984. It was decided that from July 1, 1997, China would establish a special administrative region in Hong Kong and resume the exercise of sovereignty and power over Hong Kong Island, the Kowloon Peninsula and the area termed the New Territories.

On April 4, 1990, the Third Session of the Seventh National People's Congress of the People's Republic of China adopted the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. On the same day, the No. 26 Chinese Presidential Decree announced that the legislation would be implemented on July 1, 1997.

On the night of June 30, 1997, the Hong Kong Convention and Exhibition Center was ablaze. The long-awaited Hong Kong handover ceremony between the Chinese and British governments was held there. At 00:00 on July 1, the national flag of the People's Republic of China and the Hong Kong Special Administrative Region regional flag were raised. Hong Kong finally returned to China and its painful history of colonial rule came to an end.

President Jiang Zemin of the People's Republic of China solemnly

declared:

"China has resumed the exercise of sovereignty over Hong Kong. The Hong Kong Special Administrative Region of the People's Republic of China is formally established." From then on, Hong Kong entered a new era in history.

Two years after Hong Kong's return, Macao set out on its own journey of "One Country, Two Systems".

In 1553, the Portuguese had claimed that they needed a piece of land to store and dry wet goods that had been damaged by sea water when their merchant ships were caught in a storm. They bribed local bureaucrat Wang Bo, who allowed them to dock at Macao to trade. This is how they officially settled in Macao in 1557. In 1582, China and Portugal signed The Macao Leasing Agreement, stating that Portugal and Macao would pay 500 yuan of silver to Xiangshan County every year. After the Qing Government had been defeated in the Opium War, the Portuguese government took the opportunity to occupy the Macao Peninsula, Taipa Island and Coloane Island in 1849. In 1874, the Portuguese broke into Xiangshan and built a new border gate and used it as the border of Macao. In December 1887, the Qing Government signed with Portugal The Sino-Portuguese Friendship and Trade Treaty, confirming that Portuguese were allowed to permanently reside in Macao and govern Macao.

In May 1985, the Chinese government invited Portuguese President Antonio Eyanes to visit China and hold consultations with Premier Zhao Ziyang to settle the Macao issue. After the visit, China and Portugal issued a joint communique stating that negotiations on the Macao issue would be held in Beijing in the first half of 1986. In June 1986, the first round of talks took place. On April 13, 1987, the Chinese and Portuguese governments signed The Joint Statement of the Government of the People's Republic of China and the Government of the Portuguese Republic on the Macao Issue, acknowledging that the Macao region (in-

cluding the Macao Peninsula, Taipa Island and Coloane Island) is China's territory. The People's Republic of China would resume its sovereignty over Macao on December 20, 1999.

The handover ceremony between the Chinese and Portuguese governments was held on the night of December 19, 1999 at the glittering and just-completed Macao Cultural Center Garden Hall. At 00:00 on December 20 history witnessed a solemn moment, when the national anthem of the People's Republic of China "The March of the Volunteers" was played, and the national flag of the People's Republic of China and the regional flag of the Macao Special Administrative Region were raised. Macao had returned to China. In the thunderous applause, President Jiang Zemin announced that the Chinese government had resumed the exercise of sovereignty over Macao.

That represented the start of a new era for Macao. The Basic Law of the Macao Special Administrative Region of the People's Republic of China enacted by the National People's Congress in accordance with the Constitution was implemented on December 20, 1999. "One Country, Two Systems" was tested again in practice and became a reality in China.

Part IV

Fundamental Principle Established

It was almost 20 years from the Third Plenary Session of the 11th CPC Central Committee in 1978 to the 15th CPC National Congress in September 1997. During that period, China made steady progress in establishing the rule of law.

The 15th CPC National Congress established the fundamental principle of law-based national governance and the goal of building a law-governed socialist country. With the principle of the rule of law conceived at the 15th CPC National Congress, and expanded by the 16th, 17th and 18th CPC National Congresses, society is changing with each passing day and the rule of law in China is making impressive progress. In October 2014, the Fourth Plenary Session of the 18th CPC Central Committee adopted the Resolution of the CPC Central Committee on Comprehensively Advancing Major Issues Concerning the Rule of Law. This made comprehensive arrangements for advancing the rule of law. Notwithstanding many problems exist and many difficulties are still to be overcome, China is confident that it will be able to build a socialist rule of law system with Chinese characteristics, and build a socialist country governed by law.

Chapter 33. Governing in Accordance with the Law

One day in November 1996, Professor Wang Jiafu of the Institute of Law of the Chinese Academy of Social Sciences was on a visit with his colleagues to Bern, Switzerland, to learn about the Swiss legal system and its approach to human rights. The Chinese Embassy in Switzerland suddenly told the professor to return to China immediately for some important assignment.

On his returning to Beijing, he was told to report to a working group in the Western Hills to take part in drafting the report to the 15th CPC National Congress. The group leader was Xue Ju and its members included Zhang Guoxiang, Zeng Qinghong, and Wang Huning. This group was mainly responsible for drafting the section of the report dealing with the democratic rule of law.

The group worked in the hills from November 1996 to September 1997, going through the draft report again and again. “Building a socialist country governed by law” had always been a key phrase in the drafts.

After the drafting of the report, General Secretary Jiang Zemin invited the group of fifty or sixty people to dinner. He told them with great enthusiasm that the first and the second generation of the Party’s leaders had enjoyed high personal prestige among the people. Future generations must rely on the rule of law.

Wang Jiafu recounted a detail of their work on the draft. There was a debate on whether China should be defined as “a state of laws” or “a state governed by law”. Previously the concept of “a state of laws” had been applied in all official documents of the central government. Wang and the working group insisted that the term “state governed by law” should be used, because they believed that the state should be governed

by democracy and the people. The final report to the 15th CPC National Congress adopted their term.

Years later, when Premier Wen Jiabao made an inspection tour of the China University of Political Science and Law, he spoke highly of Professor Wang of the university, who had been an advocate of the rule of law.

From September 12 to 18, 1997, the 15th CPC National Congress was held in Beijing. A total of 2,070 delegates and guest delegates were present at the opening ceremony representing more than 58 million Party members. Comrade Li Peng, member of the Political Bureau of the CPC Standing Committee and Premier of the State Council presided over the opening ceremony. On behalf of the 14th CPC Central Committee, Comrade Jiang Zemin made a speech titled "Hold High the Great Banner of Deng Xiaoping Theory and Forge Ahead with the Construction of Socialism with Chinese Characteristics toward the 21st Century". For the first time in the history of the Chinese Communist Party, the report adopted the principle of "governing the country in accordance with the law and building a socialist country governed by law". For the first time, it elaborated on the significance of "governing the country in accordance with the law" as the basic principle of national governance.

"Governing the country in accordance with the law serves as the basic principle that the Party leads the people in exercising the power of national governance."

"Governing the country in accordance with the law means that under the leadership of the Party, the broad masses of the people manage state affairs through various channels and forms in accordance with the Constitution and laws, manage economic and cultural undertakings, manage social affairs, and ensure that all state affairs are carried out in accordance with the law. The socialist democracy shall be institutionalized and legalized over time, which shall enable such systems and laws to remain

unchanged regardless of transfer of leadership or power.

"Governing the country in accordance with the law serves as the basic principle that the Party leads the people in exercising the power of national governance, and is the objective requirement of developing a socialist market economy, an important hallmark of social civilization and progress, and an important guarantee for the country's long-term stability and security."

The meeting confirmed the basic principle, established the rule of law for "building a socialist country governed by law", and made political preparations to constitutionalize the principle of "building a socialist country governed by law".

Because of its confirmation of the rule of law, the 15th CPC National Congress was enshrined in the history of China, in the history of the Communist Party of China and in the history of rule of law in China.

On March 15, 1999, the Second Session of the Ninth National People's Congress adopted the Constitutional Amendments. Article 13 stated that one paragraph should be added to the fifth article of the 1982 Constitution, which stated that "the People's Republic of China implements the rule of law and builds a socialist country governed by law." According to this, "governing the country in accordance with the law and building a socialist country governed by law" became China's constitutional principle. The country governed by law as the goal of the rule of law was clearly confirmed by the Chinese Constitution.

China is a country with a long history of rule of man. Promoting the rule of law in such a country will be more difficult than elsewhere. If the rule of law was not consciously emphasized, due to the intrinsic effect of history, society might stagnate on the previous rigid path. Finally, at the end of the 20th century, China officially established the basic principle of governing the country in accordance with the law and established the rule of law in building a socialist country governed by law, which was an

amazing achievement.

We will encounter many more difficulties and obstacles on the road ahead, but we have every confidence that China has the capacity to be a good player on its path to the rule of law.

Chapter 34. Villagers' Committee Elections

In the 1940s in Yan'an, the Communist Party of China was an active advocate of election as the key to democratic politics, though elections back then were conducted by counting beans. After many generations of hard work, the dream has finally come true. People can use their votes to exercise their rights, express their will and make their choices. This is what the democracy of the people is all about. Even though it is at community level, it deserves appreciation and encouragement.

On September 6, 2001, during his visit to China, former US President Jimmy Carter went to Quanwang Village in Suzhou, Jiangsu Province, to observe the villagers' committee election.

At 07:30, all the villagers gathered at the venue of the election. Present were boys riding motorcycles, middle-aged men with solemn looks, old ladies with headscarves, as well as expectant mothers.

Quanwang Village was home to 1,129 residents, of whom 925 were eligible voters. Among them, 805 would vote in person in the election that day. With the 55 who entrusted others to vote on their behalf, the total number of votes cast reached 860. In a general democratic election, it was said that a turnout of 67 percent was a pretty good result, while this figure was over 90 percent in Quanwang Village. The candidates chosen by the voters were listed in sequence according to the number of votes received. The candidates numbered one more than the posts.

At the election, Wu Rongchun, a 76-year-old voter questioned the candidates on how the villagers' committee would solve three problems: First, a recreational center for the elderly; Second, a kindergarten; Third, a public toilet. The voters applauded even before he finished. The candidates answered his questions on the spot.

“I think this is a very good election. I’m very honored to be able to observe this election,” Carter said in an interview: “I visited this area 20 years ago. Today I found that it has undergone tremendous changes. I saw the new look of China’s rural areas. The villagers in Quanwang Village are well aware that they have the right to make decisions on their future.”

As a matter of fact, Article 111 of the 1982 Constitution stipulated that “Residents’ committees or villagers’ committees established in urban and rural settlements are community-level self-governance organizations. Directors, deputy directors and members of residents’ committees or villagers’ committees are to be elected by direct votes of residents. The relationship between residents’ committee and villagers’ committee and the community-level government should be stipulated by law.

“Residents’ committees and villagers’ committees shall set up people’s mediation, public security, public health committees to handle public affairs and public welfare undertakings in their respective areas, mediate civil disputes, assist in maintaining public security, and report the opinions, needs and suggestions of the people to the people’s government.”

In order to implement the above constitutional provisions, the Twenty-third Session of the 6th NPC Standing Committee adopted and enacted the Organic Law of Villagers’ Committees on November 24, 1987. The law was put in trial implementation on June 1, 1988. It stipulated the basic principles, composition, election methods, village meetings, and democratic supervision of villagers’ committees. The election in Quanwang Village was an example of the law in practice. Since then, the re-election and operation of all the villagers’ committees throughout the country has been governed by this law, which has made a great contribution to democratic law-based governance in rural China.

Chapter 35. WTO Accession and Chinese Legislation

China has long embraced a centennial dream that the nation can be integrated into and connected with the world. As China has opened its door to the world, this dream has gradually become a reality. China’s accession to the World Trade Organization (WTO) was one of the most exciting chapters and the most crucial step of this endeavor. It is a marvel that China has finally succeeded. For sure the road ahead remains long, but we are confident that we can work with countries around the world to explore the promise of the future.

The WTO evolved from the General Agreement on Tariffs and Trade (GATT), signed in Geneva in 1947 by 23 countries, including the United States, Britain, and France. It was a multilateral international treaty and organization on tariffs and trade guidelines. From 1947 to 1994, GATT held eight rounds of multilateral trade negotiations. In the first seven rounds of negotiations, tariff reductions were agreed for nearly 100,000 individual articles.

On December 15, 1993, GATT held its eighth round of negotiations, the Uruguay Round. The negotiations made significant progress and a “Final Document” was ratified which stipulated that the World Trade Organization would be established to replace GATT. Tariffs on thousands of products would be cut, and global trade rules would be extended to the agricultural and service sectors. On December 12, 1994, 128 member states of GATT held their last meeting in Geneva, announcing that GATT’s historic mission had come to an end. It was replaced by the WTO on January 1, 1995.

On July 11, 1995, the General Council of the WTO decided to ad-

mit China as an observer. On November 10, 2001, the WTO Doha Conference approved China as a full member. China joined the WTO and became its 143rd member. The former British Hong Kong and Portuguese Macao had joined at the beginning of the organization on January 1, 1995. After the sovereignty of the two regions was handed over to China, their names as WTO members were turned into Hong Kong, China and Macau, China. On January 1, 2002, Taiwan officially joined the WTO in the name of Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu. The relationship between China and WTO had been fully established and legally clarified. At present, the WTO has more than 160 members, all of whom follow common international trade rules. As a result, China carried out massive work on the creation, amendment and abolition of laws before joining the WTO.

The WTO is not only an organization, but also a rule-based international trade regime with connotations of promoting values of freedom, equality, and the rule of law. China's accession to the WTO placed multiple demands on China's market economy and legal system. In November 1999, China and the United States succeeded in bilateral negotiations on China's accession to the WTO. On December 1, 1999, China's Ministry of Foreign Trade and Economic Cooperation set up an office on the creation, amendment and abolition of laws and regulations. The State Council established a leading group to draft a detailed work plan on the work.

In March 2000, the State Council Legislative Affairs Office circulated a notice on the formulation and revision of relevant laws and regulations to adapt to China's accession to the WTO, with corresponding timetables for each specific task.

In April, it issued another notice on relevant work, which stated that the Ministry of Foreign Trade and Economic Cooperation and the State Council Legislative Affairs Office should take the lead in organizing 14

central ministries with economic management functions to deal with the ministerial regulations related to foreign trade and foreign investment. The Ministry of Finance, the National Development and Reform Commission, the Ministry of Agriculture and other departments should also set up working groups. In September 2001, the General Office of the CPC Central Committee and the General Office of the State Council circulated a notice for local government regulations and policy measures to adapt to China's accession to the WTO.

From July 2000 to December 2002, in order to bring China into line with WTO rules, the 9th NPC Standing Committee enacted and amended 14 laws. The State Council abolished 12 administrative regulations and formulated and revised 38 administrative regulations. The relevant departments of the State Council formulated, revised, and abolished more than 1,000 departmental regulations and other policy measures; abolished 3,370 subnational regulations and government rules, and revised 1,126 subnational laws and regulations. It decided to terminate 188,000 policy measures of provincial and municipal governments and their departments as well as 34 of the State Council and its general office.

Chapter 36. Transfer of Power in Accordance with the Law

The transfer of power is a political event of great importance in all countries. Many historical tragedies throughout the world have happened in association with the alternation of regime and succession of throne.

In ancient China, the regime alternation in a dynasty was often rife with bloodshed. The succession was often the cause of violence between royal kinship or power groups, which had even led to social unrest and major wars. How to eliminate the violent alternation of regime and struggles for the throne was a major political challenge. In modern society, the transfer of power has gradually been realized by democratic politics and rule of law. Even for the countries that are moving towards democracy and the rule of law, the transfer of power has been a thorny issue. It has always attracted the attention of the world, especially in China, which is now moving towards national governance based on democracy and the rule of law. It is a severe test for the ruling party and the politicians to realize legal transfer of power – a peaceful and orderly transfer of power in accordance with the law. Many politicians in Chinese history had sought unsuccessfully to achieve peace and stability, and realize national prosperity, social harmony, and happiness of the people. Today the Chinese Communist Party has taken on the challenge.

Article 66 of the 1982 Constitution stipulates that “the term of the NPC Standing Committee is the same as that of the National People’s Congress. Its powers terminate as the NPC standing committee-elect is inaugurated... The office of chairman and vice-chairmen shall be limited to two consecutive terms.”

Article 79 stipulates that “the president and vice-president of the People’s Republic of China shall be elected by the National People’s Congress... Citizens of the People’s Republic of China who have voting right and eligibility to be elected and are at least 45 years old may be elected as president and vice-president of the People’s Republic of China... Their term of office is the same as that of the National People’s Congress. The term of office shall be limited to two consecutive terms.”

Article 87 stipulates that “the term of office of the State Council shall be the same as that of the National People’s Congress... The office of premier and vice premiers, and the state councilors shall be limited to two consecutive terms.”

From November 8 to 14, 2002, the 16th CPC National Congress was held in Beijing. Li Peng, member of the Politburo of the CPC Central Committee and Chairman of the NPC Standing Committee, presided over the opening ceremony. On behalf of the 15th CPC Central Committee, Jiang Zemin delivered the political report titled “Building a Prosperous Society in an All-round Way and Creating a New Situation for the Cause of Socialism with Chinese Characteristics”. The congress received extensive coverage by the press around the world.

On August 15, major newspapers around the world, including *The European Times* of France, *The Washington Post*, *The New York Times*, *The Washington Times* and *Los Angeles Times* of the United States, reported on the closing of the 16th CPC National Congress and the inauguration of the Political Bureau of the 16th CPC Central Committee. They all concluded that the Communist Party of China had achieved the most successful, peaceful and organized transfer of power in the history of China. Some media commented that the younger generation of the leadership of China had successfully taken over and would lead this dynamic country into the future. The press around the world, including *JoongAng Ilbo* and *The Chosun Ilbo* of South Korea, *Nanyang Siang Pau* and

The Star of Malaysia, *Zaobao* of Singapore, *United Daily News* and *The Gulf* of United Arab Emirates, *Sao Paulo Daily* and *Sao Paulo State Daily* of Brazil, praised the CPC's successful and peaceful transfer of power and believed that it would have a positive and profound impact on the future development of the Chinese Communist Party. The new CPC leadership would continue to lead the country forward.

The congress elected Hu Jintao as the general secretary of the 16th CPC Central Committee. The transfer of power of the Party was successfully completed in accordance with the Party Constitution. The transfer of state power would not be completed until the National People's Congress in March next year in accordance with the Constitution.

The congress also made new arrangements for work on the rule of law, and Comrade Jiang Zemin pointed out in his report:

“The most fundamental principle of developing socialist democracy is rational integration of the Party's leadership, democratic rights of the people and the rule of law and continued active and steadfast advancing of political system reform, expanding socialist democracy, and improving socialist legal system, building a socialist country governed by law, consolidating and developing democratic, united, dynamic, stable and harmonious political situation.”

“Strengthen the building of the socialist legal system. There should be laws to abide by, laws should be observed and strictly enforced, and lawbreakers should be prosecuted. Strengthen the legislative work, improve the quality of legislation, and form a socialist legal system with Chinese characteristics by 2010. Adhere to the principle that everyone is equal before the law. Strengthen supervision of law enforcement, ensure strict implementation of laws, strengthen legal publicity and legal education, and improve the legal awareness of the whole nation. Party members and officials, especially leading officials, must become the model of compliance with the Constitution and laws.”

On March 15, 2003, the world press widely reported this:

In the morning, the 10th National People's Congress fulfilled the solemn duties in accordance with the Constitution, electing Hu Jintao as the president of the People's Republic of China by secret ballot, Jiang Zemin as the chairman of the Central Military Commission, Wu Bangguo as the chairman of the 10th NPC Standing Committee, and Zeng Qinghong as the vice president of the People's Republic of China.

To warm applause, Jiang Zemin and the newly elected President Hu Jintao, and Li Peng, chairman of the 9th NPC Standing Committee and Wu Bangguo, chairman of the 10th NPC Standing Committee, greeted each other with cordial handshakes. Jiang Zemin, who was re-elected as chairman of the Central Military Commission, waved to the delegates.

At the following meetings, in accordance with Article 62 of the Constitution, Hu Jintao nominated Wen Jiabao as the candidate for premier. After the result of the ballot count, Zeng Qinghong, the executive chairman of the conference, announced: “Wen Jiabao is appointed as the premier of the State Council of the People's Republic of China.”

To the applause of the delegates, former Premier Zhu Rongji and Premier Wen Jiabao greeted each other with a cordial handshake.

A peaceful and successful transfer of power had been realized in accordance with law and the provisions of the Constitution, marking an important milestone in democratization and the rule of law in China's political life.

Chapter 37. Establishing an Emergency Support System

Another problem facing China in transition is whether vagrants in society should be subject to forced detention and repatriation or be given emergency support. The policy change from control to support represents one of the major transformations in China's social governance and an important indicator of progress in the rule of law.

Sun Zhigang, 27, graduated from Wuhan Institute of Science and Technology 2001. In 2003 he found a job with a company in Guangzhou. At around 10 o'clock on the evening of March 17, he went out to an Internet café in Tianhe District. He was stopped by a local police officer. Since he had arrived in Guangzhou not long ago, Sun had not yet obtained a temporary residence permit. He was not carrying his ID card with him, either. The police concluded he was an unregistered migrant and took him into custody at the temporary shelter for migrant repatriation. That night, nearly 110 people were brought to the police station and more than 30 of them were taken into the shelter for repatriation.

On March 18, Sun was transferred from the repatriation shelter to a rescue shelter. At some point, Sun and others were beaten by the staff of the shelter. On March 20, Sun died.

After the incident, the public security bureaus and political and legal authorities of Guangdong Province and Guangzhou City set up a joint investigation task force. Eleven suspects were quickly identified and arrested, including Qiao Yanqin, a rescue shelter worker who was accused of instigating others to beat Sun. The people's procuratorate filed indictment against the suspects for dereliction of duty.

On June 27, 2003, the Higher People's Court of Guangdong Prov-

ince made a final judgment on the case: Qiao Yanqin and Li Haiying (a migrant at the rescue shelter) were sentenced to the death for the crime of intentional assault with two years reprieve; Zhong Liaoguo (a migrant at the rescue shelter) was sentenced to life imprisonment. Nine other defendants were sentenced to terms of imprisonment. The public security, health, and civil affairs departments of Tianhe district and municipal governments, the commission for discipline inspection, and the supervision bureau of Baiyun District CPC Committee executed disciplinary penalties on the personnel who were held accountable for the death of Sun.

The case had an extensive impact. The media covered it in full and exposed similar cases, which triggered extensive discussions on the detention and repatriation system.

Some scholars filed proposals with the NPC Standing Committee for a constitutional review of the Measures for Detention and Repatriation of the Homeless and Beggars in Cities. They believed that the measures that restricted the personal freedom of citizens were in contradiction with the provisions of the Constitution and relevant laws. It should be revoked. In addition, five legal experts jointly filed a petition with the NPC Standing Committee in the name of Chinese citizens, requesting that a special investigation procedure be initiated and that investigations be conducted into the case and the system in general.

On June 22, the 12th executive meeting of the State Council officially promulgated the Administrative Measures for Rescuing the Homeless and Beggars in Cities. It was implemented on August 1, 2003 and former measures were abolished. The Chinese government had successfully accomplished a difficult institutional reform.

The Sun case promoted progress in the rule of law and human rights protection in China. What is troubling is why this progress had to come at the expense of such sacrifices, up to and including the loss of

a life. Today, we strive to act as proactive reformers and make conscious efforts to seek progress and encourage the nation and society to advance civilization and the rule of law in a rational way.

Chapter 38. Legal Right of a Couple in Yan'an

Chinese society and the legal system face serious questions, such as what legal rights a citizen enjoys, to what extent it is necessary to protect the home and the privacy of an individual, and whether the police have the right to enter the home of a citizen without permission. The case of a couple in Yan'an provides a good example of these problems to the public. The successful settlement of this case manifested progress in the rule of law in China.

At 23:00 on August 18, 2002, a police station in Yan'an, Shaanxi Province received reports from local residents that a couple were watching a porn video. Four police officers hurried to the scene and confirmed the reports by looking through a rear window. The police officers went back to the front and knocked on the door. Zhang, the husband, was lying in bed. His wife got dressed to open the door.

One police officer asked, "What are you doing?"

Zhang replied, "Nothing."

The police officer said, "Someone has reported that you are watching a porn video. You must had over the disc."

The police officers rushed to the DVD player and tried to seize the evidence. Zhang grabbed a wooden stick and ran after them. One police officer turned round, and Zhang hit him on the arm, causing him to drop the disc. Together the four police officers rushed Zhang and pushed him back onto the bed.

Zhang's wife ran forward to drag the police officers off. One police officer tried to fend her away, but she grabbed his hand and bit it and drew blood. She caught hold of the officer, and when he tried to free himself he tore his uniform. The police officers subdued the couple and

took them into custody at the police station. They confiscated the porn disc, VCD player and TV set.

Once the media began to report the case, netizens voiced their support for the couple. Perhaps because of the pressure of internet public opinion, the police discharged Zhang, whose family paid a fine of 1,000 yuan.

On October 21, two months after the incident, Baota Public Security Bureau detained Zhang on charges of obstructing official duties. On October 28, the police requested permission from the procuratorate to arrest Zhang. At this point, fresh media coverage of the case once again stirred up public opinion. Most netizens again expressed active support for the couple.

On November 4, the people's procuratorate refused to approve the arrest, on the basis that the accusation was not well-grounded and the evidence was insufficient. It sent the case back to the local public security bureau for further investigation. On November 5, Zhang was released on bail pending trial. On November 6 he went to hospital and was diagnosed with "soft tissue contusions in the head, neck, shoulders, chest and knees and mental disorders".

On December 5, Baota Public Security Bureau decided to withdraw the case. On December 31, Zhang and his lawyer reached a compensation agreement with the Baota Public Security Bureau. According to the agreement, the bureau paid Zhang a compensation of 29,137 yuan. At the same time, the leaders of the bureau apologized to Zhang and his wife and sanctioned the personnel responsible.

According to law, watching a porn video was not illegal, nor a crime. No Chinese law has ever defined any such crime, although screening porn videos in public for profit was defined in the criminal law as a business crime. Since this couple had never intended to make profits from their activity, they were not committing a business crime. The application

of any legal sanction on their activity was an abuse of the criminal law.

As with any miscarriage of justice, this case caused serious disruption. Eight years after the events, in an interview with a reporter, the wife still said that the case still impacted on their life and that it had been difficult to recover from the trauma. The husband sometimes woke up in the middle of the night shouting: "I committed no crime! I am not a criminal!" The case also left a lasting mark on the wife. Whenever she was introduced to others, they would often gossip about her among themselves to her shame and embarrassment: "Haven't you heard about her? She is the woman who was watching the porn video..."

The prosecution and correction of this case showed that the rule of law has made progress in China, although many lines are yet to be clarified. How the lines shall be demarcated when it comes to exercising public power, and how the legitimate rights and interests of citizens, including the right to housing, the right to peace and privacy, and cultural, recreational and other rights are to be fully protected, are all issues that must be resolved. The case of the Yan'an couple reflects these problems, and has helped to promote a different aspect of the rule of law in China.

Chapter 39. Private Property Rights

Property has a self-evident bearing on people. The famous British thinker John Locke believed that the right to life, liberty and property are natural human rights, and sacred and inalienable basic rights granted by God. He placed the right to property in a position alongside the right to life and liberty, showing the great importance he attached to property rights.

It has long been an issue of principle for the Communist Party of China how property, especially private property, is to be managed. Every step forward or progress in understanding this issue has been hard.

With China's reform and opening up, the ruling Communist Party of China hopes that the people will quickly achieve prosperity. At the same time, China has to face the reality that the people have gradually come into possession of property or holdings of private assets. How will this reality and these property rights be addressed in a new era? The question involves not only legislation, but political principle. There are clear questions of right or wrong, and the CPC has to provide answers. These will require innovative theory and a modern mindset, and will take courage and resolution in supporting the rule of law.

On March 14, 2004, the Second Session of the 10th National People's Congress adopted the Constitutional Amendments, which stated:

"Citizen's legitimate private property shall not be infringed."

"The state protects citizens' private property rights and inheritance rights in accordance with the law."

"For the needs of the public interest, the state may levy or expropriate the private property of citizens in accordance with the law and provide due compensation."

That was the first time for the Chinese mainland to make clear its position toward property rights with these constitutional amendments: protecting private property and private property rights. It was a major move by the CPC and the PRC in advancing the rule of law in China.

Chinese academics generally believe that this is a step forward in the rule of law and human rights protection in China. It meets the inherent requirements of the development of the socialist market economy. It is conducive to the further development of the non-public economy. It conforms to the practical needs of building a modern country governed by law, and is conducive to promoting human development as freedom in general.

During the constitutional amendment proceedings, the camp who supported the amendment and the camp who opposed it engaged in an intense, no-holds-barred debate.

In the camp of the supporters were prominent economists, including Wu Jinglian and Mao Yushi. Wu Jinglian said at a panel discussion that failure to protect private property rights would undermine further economic growth. Protection should be legalized as a constitutional baseline for legislating laws, administrative regulations and policies. Mao Yushi elaborated on the impact of the move on the rule of law. He believed that its key outcome would be to restrain the government, as the government was the most powerful and overwhelming subject of all subjects, with the authority to formulate policy and enforce the law. In China, the massive confiscation of private property during the Cultural Revolution was a painful lesson in history. "We have realized that property rights protection is a must for market economy. Recognizing and protecting private property is a mark of great progress in human civilization."

Professors Ying Songnian and Cai Dingjian were among the leading advocates for including private property rights in jurisprudence. Professor Ying opined that the current private entrepreneurs in China were not

a continuation of the capitalists of the old society but a new generation who had grown up during the period of reform and opening up. They were the builders of the socialist cause. Private property protection created the legal grounding for an innovative solution to the issue of the "Original Sin" of wealth, for which private entrepreneurs often become the target of public criticism. At the early stages of economic development of a society, the "Original Sin" of wealth has been a long-standing issue and must be addressed properly. Even though there exist unreasonable and unfair sentiments on this issue, no society should let its wealthy population live in insecurity, and a timeline had to be set for addressing this issue. Professor Cai Dingjian, who had formerly worked at the Secretariat of the NPC Standing Committee, also believed that the government's practice of demolishing citizens' houses at its own discretion while giving inadequate compensation was mostly grounded in local regulations, administrative regulations, or simple renovation programs in a city. Therefore, in this context the key issue was that private property protection should aim at preventing private property rights from being infringed by state power.

The opposition camp in essence objected to the literal statement that "private property rights will be held sacredly inviolable". Yu Quanyu, a CPPCC member and academician of the Chinese Academy of Social Sciences (CASS) was a representative among them. He made a speech at the CPPCC national assembly on his view that "private property rights will be held sacredly inviolable" should not be included in the Constitution. He also had a long article titled "Provisions on Property Rights of Current Constitutions of Capitalist Countries" to support his views. The CPPCC secretariat printed 4,600 copies of his speech that were distributed to delegates, members, and journalists during the "Two Sessions". He also made 70-80 copies of these materials and sent them to each of the leaders of the CPC Central Committee, NPC chairman and vice-chair-

men, and NPC Legislative Subcommittee members. He was indeed a staunch opponent.

The constitutionalization of private property rights leveled the ground for the Property Rights Law of the People's Republic of China to be ratified on March 16, 2007, after 13 years of long consideration and extensive discussion. It is anticipated that this will make China's private property rights, like other rights, more realistic, more practical and more secure.

Chapter 40. Constitutionalizing Human Rights

What are human rights? They are based on both natural and social attributes of human beings, and the right to treat people as human beings. Natural attributes give people a physical body, life and metabolism. Therefore, human beings have personal rights, life rights, health rights, and medical rights. It is the social attributes of human beings that enable interaction and communication between them. Therefore human beings have such rights as freedom, equality, reputation, education, employment, and social security.

Historically, dealing with the issue of human rights has been a serious test of the Communist Party of China. The CPC has never let the people down, nor has it been fettered by narrow prejudices. Instead, it has shown the courage to embrace the worldwide trend of human rights and, together with international community, it has spared no effort in promoting human rights at home and abroad with considerable success. One of the major breakthroughs is that human rights has been constitutionalized through the amendment which stated that “the state respects and guarantees human rights”.

On March 14, 2004, the fourth amendment of the current Constitution adopted at the Second Session of the 10th National People’s Congress stated: “The state respects and protects human rights,” which represents a great step forward in the rule of law.

For a long time in the past, many people misunderstood human rights. Some even thought that human rights are just a bourgeois notion, of no relevance to Marxists and communists. In fact, that perception was fundamentally wrong. Marxist thinkers have always paid close attention to human rights, attached importance to human rights, and demanded

the protection of human rights. When you read the books of Karl Marx and Friedrich Engels, it is not difficult to see their wonderful expositions about human rights. In their view, the proletariat must seize political power and must open the way for the protection and development of human rights. They positioned a communist society as their lofty ideal. In their view, “the old bourgeois society with class and class confrontation will be replaced by such a union where the free development of everyone is a condition for the free development of all.” This certainly includes human rights, and its goal is the greatest and most extensive human rights, that is, the full and free development of human beings.

Long ago, human rights were put high on the agenda of the Communist Party of China. On August 1, 1935, in the face of national peril, the CPC Central Committee issued “An Appeal to All Fellow-Countrymen for Resistance to Japan and for National Salvation”. It called on the whole country: “My country, my nation is in a critical state of life or death. If we join the fight against Japanese aggression, our nation will survive; if not, our nation will die. The anti-Japanese national salvation has become the sacred duty of every compatriot!” It called on the compatriots of the country “to fight for the life of the motherland and to fight for national independence, to fight for territorial integrity and to fight for human rights and freedom!”

Later, the resistance base areas led by the Communist Party of China formulated a series of regulations to protect human rights, including Regulations on Safeguarding Human Rights and Financial Rights in the Shaanxi-Gansu-Ningxia Border Region, Interim Regulations on the Protection of People’s Rights in the Border Areas of Shandong, Hebei and Henan, Regulations on Human Rights Protection in Shandong Province, Regulations on the Protection of Human Rights in the Northwestern Shanxi, and Rules for the Implementation of the Regulations on Human Rights Protection in Bohai Region. The regulations stipulated:

“All nationals of the Republic of China, regardless of gender, ethnicity, religion, occupation or class, shall be treated as equals legally and politically.”

“Without doing harm to the War of Resistance, the people have the following freedoms: (1) the freedom to life and to join armed forces to resist Japanese aggression; (2) the freedom to migrate and live; and (3) the freedom of speech, copywriting, publishing, assembly, association and communication; (4) the freedom of belief, religion and political activities.”

“Protect private property rights and the freedom of utilizing capital gains (from assets like land, housing and creditor’s rights), according to the law, of all the people in the border areas who fight against the Japanese aggression.”

“If not in accord with the law, the people shall not be arrested, detained, interrogated or punished physically.”

“The people have the freedom to act, and they are not allowed to be searched and be put in custody unless with prior approval in accordance with the law.”

“The people have the freedom to live, and their residences may not be invaded, searched or sealed without prior approval in accordance with the law.”

“The army and the mass organizations have no right to arrest, detain, interrogate or punish the people. When the military arrests a suspect who is involved in military secrets, it must be implemented through local government or relevant authorities.”

The “Common Program of the Chinese People’s Political Consultative Conference” at the beginning of the founding of the People’s Republic of China stipulates:

“The people of the People’s Republic of China have the right to freedom of thought, speech, publication, assembly, association, commu-

nication, life, residence, migration, religious beliefs and demonstrations.

“The People’s Republic of China abolishes the feudal system that fetters women. Women have equal rights with men in political, economic, cultural and educational, and social life. The freedom of marriage is implemented.”

The 1954 Constitution stated that:

“Citizens of the People’s Republic of China are equal in law.”

“Citizens of the People’s Republic of China who are at least 18 years of age have the right to vote and the right to stand for election regardless of ethnicity, race, gender, occupation, social origin, religious belief, education level, property status, and time of residence.”

“Citizens of the People’s Republic of China have the freedom to speak, publish, assemble, associate, march, and demonstrate. The state provides necessary supplies to facilitate citizens to enjoy these freedoms.”

“Citizens of the People’s Republic of China have freedom of religious belief.”

“The personal freedom of citizens of the People’s Republic of China shall not be violated. No citizen shall be arrested without the decision of the people’s court or the approval of the people’s procuratorate.”

“The residence of citizens of the People’s Republic of China shall not be infringed and the secrets of communication are protected by law.”

“Citizens of the People’s Republic of China have the freedom of residence and migration.”

Human rights are a great banner held high by the People’s Republic. They give political superiority, moral appeal and legal weapons to the Chinese Communist Party in mobilizing and organizing the people.

Chapter 41. "To Help or Not to Help"

China has many old fables like "Master Dongguo and the Wolf".

They are not simply legends – they are also relevant to real life.

During the Spring and Autumn Period, Zhao Jianzi, a senior official of the State of Jin, was hunting in Zhongshan. He shot a wolf with an arrow. It fled in panic and ran into Master Dongguo, a scholar who was walking in the mountains with his books. The wolf told Dongguo, "I'm being chased by a hunter, and I've been shot. Please let me hide in your bag, and I'll reward you for your help."

Dongguo knew well that wolves were dangerous, but he agreed out of pity. He put the wolf in his bag and covered it with his books. When Zhao asked whether he had seen a wounded wolf, Dongguo said "No", adding: "There are many byroads here, so it might have escaped by another route." Hearing this, Zhao headed off in another direction.

Hearing the sound of the hunter's horse hooves dying away, the wolf in the bag pleaded, "Please let me out; I have to make my escape." Dongguo let the wolf out, expecting that it would show him some gratitude before leaving. Instead, it snarled at him, "Sir, thank you for saving my life, but I am now so hungry that I have to eat you", and it pounced upon Dongguo.

Dongguo cursed the wolf for its ingratitude and tried to fight it off. At that moment, a farmer carrying a hoe over his shoulder passed by, and Dongguo told him the story. However, the wolf said, "Dongguo tied up my feet, sealed me in a bag and put books on top of me, so that I was crushed and could hardly breathe. He didn't worry about me but wasted time chatting with Zhao, while I almost suffocated. He deserves to be eaten."

Hearing this, the farmer said, "I don't believe either of you. How could you put a wolf in this bag? Do it again and let me see." The wolf accepted the farmer's request, and Dongguo put the wolf back in his bag and placed it on the back of his donkey.

Then, the farmer asked Dongguo in a whisper whether he had a dagger. Dongguo said yes and took his dagger out. The farmer motioned to him to kill the wolf, but Dongguo answered, "I can't do that."

The farmer laughed and said, "The beast has betrayed your kindness, but you can't bring yourself to kill it. You are very kind, but you're a fool." He laughed as he spoke, then helped Dongguo kill the wolf. They left it by the roadside and continued on their way.

This is a fable that has been told in China for thousands of years. Dongguo's conduct was respectable, but unwise. He was lucky to meet the farmer. The ingratitude that the story describes and condemns is common in human society. Fortunately, the law now plays the crucial role of the farmer in restraining ill-doers.

At about 09:30 on November 20, 2006, two buses arrived at Shuiximen Square in Nanjing. Peng Yu was on the first bus. When the bus entered the station, the back door opened and Peng Yu was the first to get off. At that moment, Ms. Xu, a 66-year-old lady rushed to take the second bus carrying a thermos flask in her hand. She fell to the ground near the back door of the bus which Peng Yu was leaving. With the help of Mr. Chen, another passenger, he helped her to her feet.

No one could provide clear evidence of how Xu had fallen over or whether she had collided with Peng. The only witness for this case was Chen, who called the old lady's children.

Peng helped Xu up, took her to hospital and left.

An examination showed that Xu had suffered a broken leg. Xu then claimed medical expenses from Peng, who refused to pay. He claimed that he had simply helped the old lady up to her feet and taken her to

hospital out of sympathy, and he had done her no wrong.

Once it was reported by the media, the case attracted a lot of public attention. Lots of netizens took Peng's side, feeling that it was risky to do a good deed nowadays. As to whether one should help an elderly person who had fallen, there was a heated discussion.

On January 4, 2007, Xu filed a lawsuit in the Nanjing Gulou District People's Court claiming that Peng Yu had knocked her down to the ground, and requesting over 136,000 yuan in compensation.

At 16:30 on September 4, 2007, the Court made its decision. Peng should compensate the victim by paying 40 percent of the total cost, just under 46,000 yuan.

After the verdict, Xu's attorney expressed satisfaction with the judgment but indicated that the compensation for 40 percent of the loss was less than expected. Peng disagreed with the judgment.

On September 18, 2007, Peng filed an appeal with the Nanjing Intermediate People's Court.

The two parties reached a settlement agreement during the second instance. The appellant applied to withdraw the appeal, and the case was closed. The main element of the settlement agreement was that Peng would pay Xu 10,000 yuan in compensation in a lump sum; neither party would disclose information or make statements to the media (including television, radio, newspapers, publications, and internet); and the civil judgment of the first instance of the Gulou District Court would not be enforced.

Afterwards, both parties were reluctant to talk about the matter. However, the controversy provoked by the case did not die down. During the popular 2014 Spring Festival Gala TV show, a sketch titled "To Help or Not to Help" aroused both laughter and concern among the audience.

Let's take a look at a similar case in Dazhou, Sichuan Province. We may draw a lesson from how the local police handled it.

On June 15, 2013, three children were playing in a neighborhood in Dazhou. Suddenly, an elderly woman fell to the ground. Hearing her cries for help, the three children rushed to pick her up. The woman grabbed one of the children, whose name was Jiang. She claimed that the children had knocked her down, and demanded medical expenses from their parents.

In hospital the old woman was diagnosed with a broken leg. Five months after she had recovered from the injury, she and her family had still not reached any agreement on compensation with the children's parents. On November 16, the old woman's son, Mr. Gong, carried his mother to the Jiang's, for them to take care of his mother until she was paid a compensation.

Jiang, the father of the child, said, "She just moved into my house and I had to feed her. I couldn't find out what had actually happened that day."

Jiang had to go to the police. During their investigation, several witnesses, including local shopkeepers and residents, testified that the old woman had fallen over by herself. The police concluded that the woman and her son were engaged in extortion. She was sentenced to a 7-day administrative detention, which was not enforced as she was over 70 years old. Her son was sentenced to a 10-day administrative detention, with immediate effect. Afterwards, the old woman never troubled the child's parents again. Her son refused to speak to journalists. That marked the end of this "To Help or Not" case.

Both the Nanjing case and the Dazhou case offer profound insights on society. Social morality is crucial, and even outweighs the law. However, the law must play its role in safeguarding morality.

If there is a baseline for morality, any behavior above it is noble, and any below it is mean. If the law can punish acts below the baseline as illegal or even criminal, it can be safeguarded by the law. If the behavior of society in general is above the baseline, the world will be a better place.

Chapter 42. The Property Law

If property is not protected by law, it is difficult for any owner to enjoy the rights they deserve. One of the most basic and important legal rights is the protection of property. The Property Law of the People's Republic of China is an important law. On March 16, 2007, the law was adopted at the Fifth Plenary Session of the 10th National People's Congress of the People's Republic of China and was enacted by the Chinese President.

The enactment of the Property Law aroused deep feelings. One media report was this:

"No other law has gone through so many twists and turns. It has to do with the nature of the law and the economic and social conditions of a country in transition. The Property Law is a significant component of the civil code and a fundamental law that addresses the recognition, usage, and protection of properties. It is related both to the condition of the state and to people's lives. Various controversies on the legislation of the law is essentially a game between various interest groups."

It is worth telling the story from the beginning.

In March 1993, the National People's Congress incorporated the "socialist market economic system" into the constitutional amendment and thus made it part of the Constitution. In 1994, the Property Law was included in the legislative plan of the Eighth NPC Standing Committee. Liang Huixing, a researcher at the Institute of Law of the Chinese Academy of Social Sciences, was appointed as the drafter of the Property Law. After his draft was completed in October 1999, the Legislative Affairs Commission of the National People's Congress organized the first expert seminar.

Wang Liming, a professor from the Law School of Renmin University of China and a member of the Legislative Affairs Commission of the National People's Congress disagreed with Liang. He set up another research group and then submitted his draft to the relevant department of the NPC Standing Committee at the end of 2000.

Having reviewed the two drafts, experts held that they did not differ much in content. The only difference was that Liang classified proprietary rights into chattel ownership and real property ownership; while Wang classified property rights into three categories: state-owned, collective and private-owned rights.

Some scholars held that the two drafts were both reasonable. Liang's approach emphasized the role of the property law itself as a legal instrument, which showed respect for the limits to private right and public power. Wang's approach stems from the three types of current ownership in China, i.e. state ownership, collective ownership and private ownership. Wang focused on Chinese ideology and reality, which is closer to the political attributes of Chinese law.

At the end of 2001, on the basis of the two drafts, the Civil Law Office of the Legislative Affairs Commission of the National People's Congress proposed a new draft for comment. It adopted Liang's approach in style and Wang's approach in ownership design, with stress on equal protection of different ownerships.

China joined the WTO before more debates on the two approaches. Leaders of competent authorities suggested that the Civil Code should be completed as soon as possible. Liang and Wang set aside their differences and devoted themselves to the drafting of the Civil Code.

On December 23, 2002, the NPC Standing Committee accepted the Property Law as part of the Civil Code for deliberation. Most members of the Standing Committee believed that it was not yet time to work on the Civil Code. As a result, the drafting of the Civil Code was set aside

while the drafting of the Property Law once more became the priority.

In March 2004, the National People's Congress incorporated the provision that "citizens' legal private property is inviolable" into the Constitution as an amendment, which cleared the way for equal protection of ownerships. There was no longer any restriction preventing the Property Law from protecting private property in an equal way.

Subsequently, the Standing Committee of the 10th National People's Congress incorporated the Property Law into the legislative plan of the 10th Five-Year period, which was expected to be put to a vote at the Third Plenary Session of the 10th National People's Congress to be held in 2005.

On July 10, 2005, the General Office of the NPC Standing Committee published the draft of the property law to solicit opinions from the general public. The draft received over 10,000 suggestions from all over the country. It seemed that the law would be put to a vote at the Fourth Plenary Session of the 10th National People's Congress in 2006. However, to general consternation, the entire process was severely affected by an unexpected open letter.

In August 2005, an open letter from Professor Gong Xiantian of Peking University to Wu Bangguo, chairman of the NPC Standing Committee was published. The letter was titled "A Property Law Draft that Violates the Constitution and Deviates from the Basic Principles of Socialism". Gong posted his letter online in the absence of responses from the authorities.

He believed that the draft property law was unconstitutional because it did not stipulate that "socialist public property is sacred and inviolable", and that it was trying to replace this provision with the idea that "private property is sacred and inviolable". He said, "To talk about equal protection in such a grim situation means to give the sticks and bowls of beggars the same protection as the machines and cars owned by the

minority." His point of view aroused a widespread public debate, and "equal protection" became a hot topic.

On September 26, 2005, Wu Bangguo held a symposium to solicit opinions. The Property Law was not reviewed at the meeting of the NPC Standing Committee at the end of December that year, nor was it approved in 2006. Enacting the Property Law as soon as possible was still a dream.

Civil jurists worked hard to save the Property Law and speeded up the legislative process of the entire Civil Code.

Academics held a series of seminars on "Property Law and Protection of State-Owned Assets", "Property Law and Construction of a Harmonious Society in China", and so on. Professor Liang and Gong were still at odds with each other. Party A called Party B "the so-called well-known civil jurist of the highest national legal research institution", and Party B called the other "some professor of jurisprudence". There was considerable tension between the two, and neither would compromise.

In February 2006, an article entitled "Be Confident in Reform" was published by People's Daily, which said, "China has reached a new historic turning point. To build a well-off society in an all-round way, we are facing prominent contradictions domestically and rising frictions abroad. A new ideological trend of negating and opposing reform has risen up in the society. They label some new problems and contradictions emerging in the reform process as the evil consequences of advocating Western neoliberalism. They criticize and negate the problems, seemingly confronted with a new round of debate over whether the reform should be socialist or capitalist."

The debate over the nature of reform tied a Gordian knot around the Property Law.

At the National People's Congress in 2006, Hu Jintao, general sec-

retary of the CPC Central Committee, and Wen Jiabao, premier of the State Council, made public statements on their commitment to reform. The Property Law was once again included in the legislative plan of the year by the National People's Congress. However, the expression that "the law shall be enacted in accordance with the Constitution" was added in the subsequent draft of the Property Law. At the same time, all scholars or officials who showed views on the Property Law would specially emphasize the constitutionality of it, which was probably in tune with the times.

In order to reduce disputes, the drafters of the Property Law tried to avoid some extremely sensitive issues, so that the law could make it onto the statute books.

On March 16, 2007, the Fifth Plenary Session of the 10th National People's Congress finally adopted the law with 2,799 votes in favor, 52 votes against, and 37 abstentions.

In its report on this legislation, China's state news agency Xinhua said, "China has issued a signal to further expand reform and opening up" and "The socialist market economy has been further improved and political civilization has taken an important step forward."

Chapter 43. House Demolition and Relocation

With reform, opening up, and modernization, the transformation and commercial development of old city areas are intertwined, affecting all cities, suburbs, and even a wide range of rural areas. In order to achieve the transformation or commercial development of old cities, it is necessary to transfer and resettle existing households and commercial tenants. House demolition and relocation has become a familiar term in Chinese society. As part of the process, existing households and commercial tenants must be compensated. If they should fail to reach an agreement on compensation, if the compensation should not be in place, the households or commercial tenants affected are reluctant to relocate, and their houses would be left behind and they would become "nail households", who would use a variety of means to protect their houses and their legitimate rights and interests.

"Forced demolition" and "nail households" are two co-existing terms. Facing the resistance of "nail households", those in charge of demolition would change their methods. One method is known as "eagle-taming".

In ancient times, there were eagle-tamers in Beijing. To tame an eagle, the tamer would not allow it any rest for a long time, so as to break its spirit and put it at his mercy.

Incredibly, this method was used in forced demolitions in urban and rural areas. If the household to be relocated refuse the demolition, the demolition company would harass them without respite. Since the demolition company adopts the method of mass harassment, the action is called "mass eagle-taming".

In May 2009, the demolition of some houses in Suqian City, Jiangsu

Province started. A local demolition company was commissioned by a real estate company to carry out the work. The house where 61-year-old Li Keying lived was within the scope of demolition, but the two sides failed to reach an agreement. In order to carry out the demolition, the manager of the demolition company repeatedly led his employees to Li's house. They insulted and threatened the family, broke glasses, and even set fire to the firewood in front of the house. Their purpose was very clear – to force them out.

Wang Maling, Li's daughter, reported the matter to the police several times but received no response.

On May 30, the demolition company manager led a group of nine employees to the Li's. They shouted abuse, broke into the house and kept the family under siege. Li Keying and his family huddled in the room with no response. After nearly an hour, Wang took a fruit knife and warned them to leave the house. However, they continued with the harassment.

Wang told her mother to look after her three children, opened the door and lashed out wildly with a kitchen knife, killing one and injuring six of the demolition company employees.

Wang was convicted of intentional homicide and sentenced to eight years in prison by the court. She rejected the judgment and filed an appeal. In the second instance, Jiangsu Superior People's Court negated the conviction of the first instance and made a final verdict, sentencing her to five years for the crime of willful and malicious injury.

Ultimately, Li's house was pulled down, and it is not known whether she received the compensation due. This "nail household" was undoubtedly not a success.

However, there are some other "nail households" who stuck to their position and safeguarded their rights and interests by law.

According to reports by the *Southern Weekly*, the "Toughest Nail

Household" in Chongqing became an example of safeguarding rights by law.

On March 21, 2007, Yang Wu, a resident of Chongqing Municipality, climbed onto the roof of his old house with two gas cylinders, a national flag and two banners with the slogan "Citizens' legitimate private properties are inviolable". He hung up the national flag and the banners. The old house was surrounded by open ditches and looked like an isolated island.

Yang stood by the window, clenching his fist and shouted, "Let me talk to the mayor!" He picked up his mobile phone and called a journalist saying, "I am Yang Wu from Chongqing, and I want to see the secretary of the Municipal Party Committee!"

The story started in 1993. At that time, Yang's old wooden house was in disrepair, so his wife Wu Ping applied to the authorities and got permission to rebuild it on the original plot. Unfortunately, shortly after the house was built, the authorities posted a demolition announcement, taking the entire block as a pilot renovation project. A local company would be responsible for the demolition and redevelopment.

For the residents who had long been living in the rundown area, this was undoubtedly good news. However, the demolition did not start due to lack of funding, and remained in suspense for 11 years. In 2004, the work restarted. There were two forms of compensation – resettlement in the new building or resettlement through a cash allowance. Yang and his wife requested resettlement in the new building. The developers did not agree with them, and the problem remained unsettled without further negotiations.

After some time, all the households except the Yang's accepted the resettlement plan. By September 2006, they were the only household that had not reached an agreement with the developer. Eventually, the developer offered a compensation of 3.5 million yuan. However, the Yang's

would accept nothing other than a resettlement in the new building, to which the developer did not agree.

On March 19, 2007, the local court judged that the Yang's should leave the house before March 22, or the people's court would authorize forced demolition. On the afternoon of the March 21, Yang climbed over the deep ditch and got onto the roof of his house. The rooftop drama began. A crowd of onlookers gathered. Yang and his wife were prepared to continue with their life on the rooftop. The onlookers threw a thick green nylon rope to Yang for him to pull more supplies up. The couple told journalists and the crowd of onlookers, "We are prepared. We'll never leave. We will live or die with the house!"

The next day, the picture of Yang waving the national flag appeared on major websites and media across the country, causing considerable public outcry.

Subsequently, Wu would host a press briefing in the afternoon every day, claiming, "I'm defending the dignity of the law. I'm protecting my own legitimate rights and interests."

Hundreds of media from China and across the world took an interest, as did the general public.

On the afternoon of March 28, Zheng Hong, secretary of the district Party committee, met with Wu for three hours.

On April 1, under the guidance of the district court, the two parties reached a resettlement agreement.

The developer filed a withdrawal with the district court, and the court held that the forced demolition order be terminated. Wu signed an off-site resettlement agreement with the developer. She accepted physical resettlement of a house at a different location, which would be the same in size as her old house but with street frontage.

At 16:30 on April 1, Yang, who had been in his old house for 12 days, walked out of the house. The flag and banners were removed. In

this way, the incident that had caused such a stir was resolved.

Relocation has been a thorny issue in China since reform and opening up. It is a precondition for land acquisition, renewal and new buildings. Due to the lack of effective protection of private property and the lack of effective restrictions on public power, forced demolition happens all the time. Demolition and relocation has become an important cause of property disputes, criminal cases and petitions. All in all, the key to solving the problem of demolition lie in working out how to restrict the state's public power and how to protect citizens' private property rights in accordance with the law.

Chapter 44. Building a Country Governed by Law

In modern times, the concept of a country governed by law was first put forward by Immanuel Kant in the West and by Liang Qichao in China. A century ago, Liang took “a country governed by law” as an ideal and proposed it in his study of Guan Zhong, which he started in 1903. In 1907, he finished his book *The Biography of Guanzi*, which claimed that Guanzi was the first proponent of the rule of law in China over the last 5,000 years. It was in this book that Liang gave the first definition of “a country governed by law” in Chinese history, saying, “What scholars call the country governed by law is actually a country under the rule of law.” He also conducted research into the objectives of the rule of law.

In 1913, Liang was the Minister of Justice in Yuan Shikai’s Beiyang government. In a policy declaration of the government, he wrote: “At the present, those who consider the general interest all consider the task of building a country governed by law as essential. How can a country governed by law be built? It cannot happen without popular support for the rule of law. How then can this popular support happen? It will happen only when everyone respects the law, reveres it and does not violate it. Therefore, a constitutional state must take judicial independence as the top priority.” Liang’s statement unveiled the relationship between governing the country by law, popular support for the rule of law and judicial independence. Unfortunately, the idea of building a country governed by law had never been realized from the Qing Dynasty to the Republic of China, although it was on the agenda from time to time.

The founding of the People’s Republic of China in 1949 brought new hope for building a country governed by law. In the 21st Century, with rapid developments in all the fields, the building of a country gov-

erned by law is also making rapid progress.

On October 15, 2003, at 09:00 Beijing time, Chinese astronaut Yang Liwei entered space for the first time in the Shenzhou V spacecraft. It was an important milestone, marking a big step forward for China’s aerospace exploration. Thereafter, Chinese astronauts were given a unique title – Taikonaut (spaceman). With Yang’s success, China became the third country to achieve manned spaceflight after the Soviet Union and the United States.

In October 2007, Yang experienced another kind of rapid development – the rapid development of the Chinese Communist Party, Chinese society and the rule of law. That year, he was elected a deputy to the 17th CPC National Congress, at which he was elected an alternate member of the CPC Central Committee.

At this congress, Hu Jintao, general secretary of the CPC Central Committee, delivered a political report, which emphasized “the full implementation of the basic principle of governing the country by law and speeding up the building of a socialist country governed by law”.

Since the 17th CPC National Congress, the public are more focused on the socialist legal system with Chinese characteristics, citizenship, governing the country in accordance with law, administration by law, reform of the judicial system, and the socialist rule of law. The building of a country governed by law in China is advancing at a faster pace, and “accelerating the building of a socialist country governed by law” has become the goal in this new historical period.

Chapter 45. Tariff Sanctions

Tariffs are taxes levied on taxpayers by the designated agency of a country, the customs, in accordance with the standards of the country, when certain goods or articles pass through the borders of that country. Import duties are levied on the consignee of inbound goods or articles, and export duties are levied on the consignor of outbound goods. The significance of tariffs is four-fold: to uphold national sovereignty, to protect the country's economic interests, to implement foreign policy, and to maintain international economic order.

While many countries can maintain good trade relations with other countries, some resort to unfair competition in international trade. Some countries sell their goods to another country at a price below the domestic market or even below the cost, which is called dumping. Some governments subsidize exporting companies to raise their competitiveness, which is called government subsidy. To prevent such unfair competition, countries in the international community use tariff sanctions to punish such dumping and subsidies. Tariff sanctions are punitive tariffs imposed by one country on specific goods imported from other countries in order to protect the former's economic interests and safeguard the international economic and trade order. From this perspective, tariff sanctions are conducive to the orderly development of international trade. However, there are cases where countries maliciously adopt tariff sanctions on the pretext of countering dumping and subsidies when they are, in fact, engaging in trade protectionism. This impairs the interests of many countries and even world economic and trade order. Such cases are not isolated incidents.

When China was operating a planned economy in the past, tariff

sanctions were not a problem. Few goods were exported and would not be subject to sanctions. China did not impose sanctions on other countries either, in that few goods were imported. However, since China opened up to the world market, especially after its accession to the WTO, China has been subject to storms of tariff sanctions from other countries around the world.

First, let us have a look at the anti-dumping sanctions imposed on China.

In 1993-1994, Mexico imposed anti-dumping duties as high as 16-1105 percent on more than 4,000 products in 10 categories from China.

It was reported that by the end of 2008, China had been subject to the most anti-dumping investigations for 14 consecutive years and the most countervailing investigations for three consecutive years.

From November 2008 to November 2009, a total of more than 100 sanctions were imposed on Chinese enterprises, more than one-third of all the related penalties in the world over that period. China suffered the most severe sanctions, involving tens of billions of US dollars. Some countries even imposed anti-dumping duties of more than 100 percent on China.

These anti-dumping duties caused considerable economic loss to China. One typical example would be the export of Chinese leather shoes to the European Union. In October 2006, the European Union imposed a 16.5 percent anti-dumping duty on shoes made in China for two years. By the end of 2008, sales of leather shoes exported to Europe had fallen by 20 percent, costing 20,000 jobs in China. After the penalty expired in October 2008, the European Commission launched an anti-dumping review of Chinese shoes.

In fact, leather shoes exported by Chinese enterprises like Aokang to the EU were priced as high as US\$20 per pair, which should not be regarded as dumping. However, the EU insisted it was dumping. It was a

difficult problem for China to resolve.

Second, let us turn to the countervailing duties that China has suffered.

Tariff sanctions are used not only for anti-dumping, but also for another form of unfair competition – government subsidies. According to the legal rules of the market economy, products should compete on a level playground. Some countries subsidize exports because of the high cost of production and lack of international competitiveness. By providing subsidies, the production cost of their enterprises is reduced, thus enhancing their competitiveness in export. This creates unfair price competition for unsubsidized goods produced in other countries. In response, the import countries will impose countervailing duties on such products. Reasonable use of countervailing duty sanctions in accordance with international economic and trade laws is, of course, conducive to maintaining fair competition and the order of the world market economy. Unfortunately, they are often reduced to a means whereby some countries protect their own goods against others, ultimately leading to true injustices and damage to the international economic order. China has also fallen victim to countries that have misused countervailing duties. The United States' imposition of countervailing duties on Chinese oil well pipes at the end of 2009 is a case in point.

According to the statistics from the Ministry of Commerce, except for the US special tariff on Chinese tires, in the first three quarters of 2009, a total of 19 countries and regions launched 88 trade remedy investigations against China, including 59 anti-dumping and 9 countervailing cases – a year-on-year increase of 29.4 percent. The money involved amounted to US\$10.2 billion, up 125 percent.

The sanctions were so severe that Pascal Lamy, then director-general of the WTO said: "With the 2009 data as benchmark, China has become

the world's biggest target for anti-dumping. I understand the feeling of China under attack."

As it further connects with the world, China faces many major legal issues. With deeper reform and opening up, China's ability to cope with international legal issues is expected to be improved.

Canada's punitive tariffs on Chinese copper pipe in the name of anti-dumping in 2007 is a classic example.

At the time, more than 90 Chinese companies were charged, with only 1.5 of them responding to the lawsuit. On January 18, 2007, the Canada Border Services Agency (CBSA) made a final ruling. The two respondent companies, Tianli Pipe and Zhuji Howhai Air Conditioner, had zero dumping and subsidy margin, while other enterprises which did not respond or cooperate had dumping margins ranging from 37 percent to 242 percent – a subsidy amounting to 17.73 yuan per kilogram. Canada imposed a 17 percent countervailing duty on those companies.

On 27 September 2009, the Ministry of Commerce issued a notice to initiate an anti-dumping and countervailing investigation against chicken products from the United States. With sales exceeding US\$1 billion in the Chinese market, once the products were labeled as dumping, the revenues of related industries in the United States would decline significantly and about 10,000 people would face unemployment. That was China's first ever investigation against American companies.

In general, China must safeguard its rights in accordance with the law. In essence, China should revise existing preferential laws and policies, strictly abide by the provisions of international trade laws, reasonably avoid legal risks and eliminate hidden threats. According to the list of subsidies listed by the relevant agencies, these all fall into the category of subsidies: special economic zone incentives, benefits granted due to export performance or the employment of ordinary laborers, preferential

loans, government-guaranteed loans, products purchased from state-owned enterprises, fee exemptions for land use, and tax incentives. Therefore, we must extend reform of the system and mechanism guided by the market economy, and treat both the symptoms and the root causes.

Chapter 46. “My Dad Is Li Gang”

China’s traditional society is one that values hierarchy and privilege. Privilege can be an expression of inequality. Social inequality is reflected through entitlement and discrimination. In contemporary China, privilege is both a historic and current phenomenon. Privilege can be the harbor of sin, allowing criminals to escape punishment; it may also become the target of public criticism.

“My dad is Li Gang” is a case particularly noteworthy.

At 21:40 on October 16, 2010, the campus of Hebei University was still active. Two roller skating girls were knocked down near their dormitory by a speeding black Magotan sedan. Instead of stopping or slowing down, the driver continued to head toward the dormitory building, with its back wheels running over a girl. The girls were rushed to hospital. One was found dead, the other injured.

When the car returned from the dormitory building, it was immediately stopped by students and security guards. The perpetrator did not show any care or concern for the girls, nor did he feel any remorse. Instead, he said, “They scratched my car! Do you know who my dad is? My dad is Li Gang! Sue me if you will!”

The driver was Li Qiming, the son of Li Gang, deputy director of a police bureau in Baoding.

On October 18, 2010, a post about the incident went viral online. It immediately generated a heated discussion among netizens and the media, causing an upsurge of public anger. Online searches revealed that Li Qiming had enrolled in 2008 as a student at the Media and Communications School of Hebei University. On the afternoon of October 21, 2010, Li Gang, father of the suspect, gave an exclusive interview to

CCTV. In the interview, he offered a sincere apology and a deep bow to the victims and their families.

On October 24, 2010, Li Qiming's arrest was approved by the People's Procuratorate of Wangdu County on charges of hit-and-run. On January 30, 2011, the People's Court of Wangdu County announced its first-instance verdict:

Li Qiming had violated the traffic and transport regulations and caused a serious traffic accident, resulting in one death and one injury. He was fully responsible for the accident. Li was appraised to be driving at a speed of 45 to 59 kilometers per hour, far beyond the school's limit of 5 kilometers per hour. His blood-alcohol level was 151 milligrams per 100 ml, which constituted drunk driving and hit-and-run.

Li Qiming had committed a terrible crime with serious consequences. But given that his father Li Gang paid a compensation of 460,000 yuan to the dead girl's family and 91,000 yuan to the injured girl, Li Qiming was forgiven by both families. Li Qiming pleaded guilty in court and expressed penitence. Therefore, the court, at its discretion, adopted the counsel's opinion on Li Qiming's lenient punishment.

He was eventually sentenced to six years in prison for the accident.

Article 133 of the Criminal Law of the People's Republic of China stipulates that whoever violates traffic and transportation laws and regulations thereby giving rise to major accidents involving severe injuries, deaths, or great losses of public and private properties are to be sentenced to not more than three years of fixed-term imprisonment; when fleeing the scene after an traffic and transportation accident or under other particularly odious circumstances, to not less than three years and not more than seven years of fixed-term imprisonment; when running away causes a person's death, to not less than seven years of fixed-term imprisonment.

Chapter 47. Establishment of Legal System

When it comes to legal systems, people often think of continental legal system and Anglo-American legal system. In fact, both are western legal systems, or capitalist legal systems. Parallel with the two western major legal systems is another new one – the socialist legal system. There are different socialist legal systems in different countries. China's system has a unique name – socialist legal system with Chinese characteristics.

On February 28, 1949, the CPC Central Committee broadcast a directive on the abolition of Six Codes and the determination of the judicial principles in the liberated areas. According to the directive, "In a socialist state under the people's democratic dictatorship led by the proletariat and based on the alliance of workers and farmers, Six Codes of the Nationalist government should be abolished. The people's judicial work should no longer be based on Six Codes, but on the new laws of the people."

After more than 60 years under the leadership of the Communist Party of China, the socialist legal system with Chinese characteristics was established. Sixty-odd years may not be long for a nation or a people. But for individual persons, it means three generations. China has waited for too long.

On March 10, 2011, Wu Bangguo, chairman of the NPC Standing Committee, delivered a report on the work of the standing committee to the Fourth Session of the 11th NPC, when he solemnly declared:

A socialist legal system with Chinese characteristics has been established. Based on China's national conditions and practical experience, the system is tailored to reform and opening up and embodies the Party and the people's will. This system is three-tiered. The Constitution serves as

the fundamental law, and the related laws of the Constitution and civil and commercial laws constitute major supporting laws. The third tier includes the laws and administrative regulations, local, autonomous and independent regulations

The system is dominated by the Constitution and consists of seven parts – the Constitution and its related laws, civil law and commercial law, administrative law, economic law, social law, criminal law, litigation and non-litigation procedure law.

The establishment of this system is a major achievement in implementing the rule of law in China over the past seven decades, especially during the 40 years of reform and opening up. Painstaking efforts have been made. It is an achievement, and also a new start. Building on this system, China's law in the new era is striding forward.

Chapter 48. “Piece of S**t” Case

On June 29, 2012, a “Piece of S**t” Case was heard in the Third Intermediate People's Court in Fuling, Chongqing. After a two-hour trial, the court issued a first-instance verdict: the decision of the defendant, the Chongqing Municipal Reeducation Commission, to detain the plaintiff Fang Hong (Fang Zhusun online) was illegal. Chongqing Municipal Reeducation Commission should assume the handling fee of 50 yuan. The decision on the plaintiff reeducation should be withdrawn.

To understand this bizarre case, we shall go back to April 2011.

On April 19 to 22, 2011, Fang Hong, an employee of the forestry bureau in Fuling district, made numerous posts online. On April 22, he published an inappropriate and indecent comment:

“Bo Xilai took a dump and asked Wang Lijun to eat it up. Wang took it to the procuratorate and the procuratorate took to the court. The court asked lawyer Li Zhuang to eat. Li refused and said whoever produced it should eat it. Finally it was turned back to Wang.”

The comment was discovered by the internet police. On April 24, 2011, Fang Hong was questioned by the police and held in administrative detention for 10 days.

However, the detention decision was quickly revoked. At the same time, Fang received a notice from the Chongqing Municipal Reeducation Commission, informing him that he would be imposed one year of reeducation through labor according to the provisions of Article 10.4 of the Trial Measures for Reeducation through Labor. The notice also informed him that he enjoyed the right to apply for a hearing and hire an attorney to provide legal services.

After receiving the notice, Fang did not file for a hearing.

On April 28, 2011, the reeducation commission issued a decision which confirmed the one-year reeducation penalty because there was sufficient evidence to show that Fang had disturbed the order of public security.

The next day, the reeducation commission informed Fang's son, Fang Di, of this decision by telephone. Fang Hong was sent to Chongqing Fuling Reeducation Center to carry out the decision.

On April 24, 2012, Fang Hong was released. He filed an administrative lawsuit with the Third Intermediate People's Court. On June 29, the court held a hearing of the case. In the court, Fang said that the reeducation commission made the administrative decision based on the State Council's Trial Measures for Reeducation through Labor formulated by the Ministry of Public Security. Since this regulation violated the Legislation Law of the People's Republic of China, it should be null and void. He contended that the administrative actions of the defendant had no legal basis at all, and requested a revocation of its decision on April 28, 2011.

As the defendant, the reeducation commission argued in court that from April 19 to 22, 2011, Fang Hong had repeatedly spread rumors online, which caused serious disturbance to public order. According to Article 3 of the State Council's Decision on Reeducation through Labor, the Supplementary Provisions of the State Council on Reeducation through Labor, and Article 10.4 of the Trial Measures for Reeducation through Labor and relevant regulations approved by the Standing Committee of the National People's Congress, the decision to impose a one-year reeducation through labor was in accordance with the law through a legal procedure.

After the trial, the court held that Fang's comments online, although indecent, did not fall into the category of rumors, nor did they cause serious disturbance to public security, far less serious harm to social order

and national interests. The defendant's decision was not well-grounded with insufficient evidence. The court also held that public servants should exercise restraint, tolerance and humility in their line of duties.

The court held that the decision was illegal and should be revoked. However, since the administrative enforcement measures had been completed and there would be nothing to revoke, it was legally confirmed that the decision had been illegal.

On September 30, 2012, Fang filed a lawsuit with the Third Intermediate People's Court against the reeducation commission for administrative compensation. The court handed over the case to its subordinate Dianjiang County People's Court. On January 31, 2013, the court made an administrative compensation ruling, ordering the defendant to compensate the plaintiff for losses in accordance with relevant regulations. Fang refused to accept the administrative compensation ruling and appealed to the Third Intermediate People's Court. The court formed a collegiate bench in accordance with the law and conducted the second instance hearing, which maintained the first-instance verdict of the Dianjiang court. Fang obtained the appropriate state compensation according to law.

The case caused widespread concern at home and abroad. From the case, we can see both problems and progress. The handling and overruling of the case and the resulting state compensation demonstrated how far China has come in implementing the rule of law.

Part V

Full Implementation

While the 17th CPC National Congress was perceived as the first transfer of CPC leadership in accordance with law, the 18th CPC National Congress was regarded as the first comprehensive lawful transfer of central power, which was another hallmark of China's progress towards the rule of law.

On November 8, 2012, the 18th CPC National Congress was convened in Beijing. Xi Jinping was elected general secretary of the CPC Central Committee at the congress. Hu Jintao delivered a report titled "Steadfastly March forward along the Road of Socialism with Chinese Characteristics and Work Hard to Build a Moderately Prosperous Society in an All-Round Way". On behalf of the CPC Central Committee, he set out new plans to promote the rule of law on all fronts.

The Third Plenary Session of the 18th CPC Central Committee convened in November 2013 ratified the Resolution of the CPC Central Committee on Major Issues Concerning Comprehensively Deepening Reform, which lays out plans for judicial system reform as the focus of reform for the rule of law. In October 2014, the Fourth Plenary Session of the 18th CPC Central Committee ratified the Resolution of the CPC Central Committee on Certain Major Issues Concerning Comprehensively Advancing the Law-Based Governance of China, opening a new historic chapter for the rule of law in China.

Chapter 49. Violence Against Japanese Brands

Chinese patriotism is unique and complex, probably because China has a long and miserable history of being the victim of foreign invasion. Patriotism in the real sense, however, is never a narrow ideology. Nor will it be expressed with illicit or criminal actions. Patriotism in a bigoted sense is immoral, unjust and even illegitimate. We have to treat the ideology of narrow patriotism with respect to freedom of thought and the hope that it will change. With regard to the illicit actions of narrow patriotism, we must take powerful legal measures. Criminal acts must be prosecuted and punished through legal procedures. Mankind must live up to the values of compassion, friendliness, harmony and justice, and we should be committed to the application of laws to safeguard the values that are both moral and noble.

The dispute between China and Japan over the sovereignty of Diaoyu Dao has been longstanding. In the 21st century, the conflict tended to escalate. The Japanese government held a cabinet meeting on the morning of September 11, 2012 and decided to take 2 billion Japanese yen (equivalent to 300 million US dollars) out of its 2012 budget to "purchase" Diaoyu Dao together with three adjacent islands and "nationalize" them. The news angered the entire nation of China. Chinese state leaders made it clear: Sino-Japanese relations have recently faced a grim situation over Diaoyu Dao. China has taken a clear and consistent stance on this issue. Japan's "purchase" of the islands was illegal and ineffective, and the Chinese side stood firm against it. The Chinese government is steadfast in safeguarding its territorial integrity. The Japanese side must be aware of the severity of this issue and avoid making wrong decisions. It should maintain the general process of sound development of Sino-Japanese re-

lations together with the Chinese side.

In a meeting with visiting US Secretary of Defense Leon Penetta, Chinese leaders warned Japan and sent a signal to the US: "Japan should pull back before it's too late and stop doing or saying anything that hurts China's sovereignty and territorial integrity. We urge the US side to speak and act cautiously, stay out of the conflicts over Diaoyu Dao and not to do anything that may intensify conflicts or complicate the situation."

On the afternoon of September 7, Ma Ying-jeou, leader of Taiwan, flew to Pengjia Island, the nearest Taiwan island to Diaoyu Dao, as a sign of Taiwan's claim to sovereignty over the islands.

Anti-Japanese sentiments became increasingly widespread in China. Protests took place in nearly 100 cities. Violence occurred during protests in Beijing and Changsha on September 15. In Guangzhou, more than 10,000 protesters joined the procession to the block of the Japanese Consulate and threw rocks at its buildings. A similar number of protesters joined the procession in Shenzhen. In Shanghai, about 4,000 protesters gathered in front of the Japanese Consulate.

In Qingdao, the routine operation of several Japanese-brand companies was interrupted. There were also parades in Nanjing, Hangzhou and Chengdu. A strong police presence was deployed at some Japanese-brand supermarkets in those cities. On the same day, a large-scale protest broke out in Xi'an, the capital of Shaanxi Province in northwest China.

At 15:40 that day, Li Jianli was driving a Toyota on the West Ring Road in Xi'an, when he and his Japanese-brand car were attacked by two men – Xun Jiankui and Cai Yang. Li suffered heavy injuries, and the damage to his car cost him 7,500 yuan.

In July, 2013, the People's Court of Lianhu District of Xi'an sentenced Cai Yang to prison terms of nine years for intentional injury and 18 months for provoking trouble, rounded to 10 years in total. Cai was also sentenced to pay the victim compensation of 258,000 yuan. Xun

Jiankui was sentenced to a year in prison for provoking trouble.

Meanwhile, the People's Court of Beilin District of Xi'an pronounced judgment on four similar cases.

Five defendants were sentenced to prison terms for provoking trouble on the same day. Li Qiang, accused of smashing and overturning five Japanese-brand cars, was sentenced to 21 month in prison. Hu Jianli, accused of smashing and overturning four Japanese-brand cars, was sentenced to 18 months.

Feng Yin, accused of smashing a Japanese-brand SUV in the compound of the Standing Committee of Shannxi Provincial People's Congress, was sentenced to 14 months. Tang Dong, accused of smashing a Japanese brand SUV, was sentenced to one year.

Wang, a minor defendant, accused of assaulting a policeman on duty at the Bell Tower Hotel Square, was sentenced to one year in prison.

The People's Court of Yanta District of Xi'an pronounced judgment on four defendants for provoking trouble on the same day. Wang Gang was sentenced to 22 months for smashing four Japanese-brand cars. Wang Chao, who joined in smashing three Japanese-brand cars, was sentenced to 17 months. Chang Quan was sentenced to 16 months for the same offense. Guan Bin, who joined in smashing one Japanese brand car, was sentenced to 10 months with a one-year reprieve.

The People's Court of Chang'an District of Xi'an pronounced judgment on Gao Peng to 17 months for smashing three Japanese-brand cars on September 15, 2012.

The judicial trials of the serial cases in Xi'an had thus been concluded, which has left us a lot to think about in the long run.

Three days after the incidents in Xi'an, on September 18, an old man in his 80s was assaulted by a protester for expressing unpopular opinions during a parade on protecting the sovereignty of Diaoyu Dao. Some witnesses later reported that the attacker was Han, a professor of Beijing

University of Aeronautics and Astronautics. The following day, Han confessed that he had physically attacked the old man and slapped him twice, while the old man didn't fight back. He claimed the old man was a "traitor" who deserved the punishment.

Narrow patriotism is neither wise nor rational. Whether in times of peace or war, it is like a mental demon that provokes rash conduct. A rational and law-based society will never tolerate violence. Although the law can never be a cure-all, it must guide people to live rationally and lawfully and refrain from foolish and evil conduct. Saying no to narrow patriotism is the manifestation of judicial justice, which meets the requirement of the rule of law.

Chapter 50. Deepen Reform in All Respects

Reform has always been an arduous process. It takes persistence and perseverance to press ahead. This is the only way to achieve ultimate victory in reform. Reform and law are always closely related, which is as true in China as in the West. Some well-known examples include the Legal Reform of Solon in Athens of ancient Greece and the Legal Reforms of Shang Yang of Qin, Wang Anshi of Northern Song, and Zhang Juzheng of Ming in ancient China.

Why is reform so often referred to as "legal reform"? It is because legal reform constitutes a key part of reform, and remaking, amending and abolishing laws is how reform measures are implemented and reform objectives are achieved. To be specific, reform measures must become the legal institution through legislation. The legal institution that is inconsistent with reform requirements has to be amended, and the legal institution that obstructs reform must be abolished. That is why overall reform is so closely tied to legal reform and the rule of law. This is the case for deepening reform in all respects that is being undertaken in China today.

On November 9-12, 2013, the Third Plenary Session of the 18th CPC Central Committee was held in Beijing. It was a very important conference in the history of the Communist Party of China, presided over by Xi Jinping, general secretary of the CPC Central Committee. The main item on the agenda was the report of the Political Bureau of the CPC Central Committee on its work, and major issues of deepening reform in all respects.

On November 12, the Plenary Session adopted the Resolution of the CPC Central Committee on Major Issues Concerning Comprehensively

Deepening Reform. The resolution is of great significance to reform and rule of law in China. It is in this resolution that the CPC laid out important plans and relevant reform measures for the rule of law in China. Part Nine of the resolution is titled "Promoting the Rule of Law in China", which states:

"Building a law-governed China, we must adhere to the principle of integrated advancement of rule of law, governance by law, and administration in accordance with the law, and adhere to the principle that building of law-governed state, law-governed government and law-governed society will be carried out in an all-round way. We should deepen the reform of judicial institution, accelerate the establishment of an equitable, efficient and effective socialist judicial institution, safeguard the rights and interests of the people, and let the people feel equity and justice in every case of lawsuit.

First, we will safeguard the authority of the Constitution – the fundamental legislation that bears the highest authority to guarantee the thriving prosperity, lasting peace and long-term security of the Party and the nation. We will further improve the mechanism and procedure for supervising the implementation of the Constitution and step up its comprehensive implementation to a new level. We will establish and improve the institution that promotes national faith in and compliance with as well as defense and application of the Constitution and laws. We will uphold the principle that everyone is equal before the law and no organization or individual has the privilege of overriding the law, and all conduct that breaks the Constitution and laws has to be prosecuted. We will establish a universally-applied legal counseling institution, improve the mechanism to review the legality of normative documents and major decisions, establish a proper indicator system and performance review standard, and improve the institution for filing and examination of laws, regulations and normative documents. We will improve the social mecha-

nism for publicizing laws to enhance people's awareness and gradually increase the number of larger cities that hold subnational legislative power.

Second, we will deepen reform of administrative law enforcement. Administrative law enforcement bodies will be integrated to achieve centralized law enforcement that functions in a comprehensive way. The problems of overlapping authority and responsibilities as well as duplication of law enforcement will be addressed. An efficient and effective administrative law enforcement system with unified authority and responsibilities will be established. Levels of administrative laws enforcement bodies will be cut. Local law enforcement in key areas such as food safety, drug quality, work safety, environmental protection, labor and social security, maritime and island management will be strengthened. The law enforcement of urban management authority will be further improved for efficient administration and better service. The procedures of enforcing administrative law will be improved, and the right of discretion in law enforcement will be regulated. Supervision of enforcement will be intensified, and the accountability system for expenditure that will be guaranteed by the fiscal budget will be fully implemented. Law enforcement will be strict, fair, non-abusive and by specified norms. The mechanism for the interface and interaction between administrative law enforcement and criminal jurisdiction will be improved.

Third, make sure that the right to try cases and the right of jurisdiction are independently and fairly exercised. Reform the judicial system and assist courts and procuratorates below provincial level to take personnel, finance and property under unified management. Encourage them to establish judicial systems separate from those of the administrative divisions to ensure unified and correct implementation of laws. Establish management systems in line with the professional features of judicial personnel. Improve procedures to enroll, exchange and select judges, prosecutors and police officers. Improve classification and man-

agement systems. Establish sound professional guarantee systems for judges, prosecutors and police officers.

Fourth, establish a sound mechanism of applying judicial power. Optimize allocation of judicial power. Establish a mechanism where judicial power realizes division of function, collaboration and mutual-support. Strengthen legal and social supervision over judicial activities. Reform the system of judicial committee. Improve accountability of judge and jury so as to enable the judge to rule and to take responsibility. Clarify functions of various levels of courts and regulate the supervisory relationship between the courts at upper levels and lower levels. Promote open trials and open procuratorial affairs. Record and document all materials from court trials. Make legal documents more reasonable, and disclose all criteria applied in court judgment. Strictly enforce supervision and procedures of commutation, parole and parole for medical care. Widely adopt the systems of people's juror and supervisor to widen the access of common people to jurisdiction.

Fifth, improve the judicial protection of human rights. The state respects and safeguards human rights. Judicial procedures like sealing-up, seizure, freezing and disposing of property involved in cases will be subject to norms. Improve the mechanisms to prevent and correct miscarriages of justice and ensure accountability. Extorting confessions by torture, corporal punishment and maltreatment will be strictly prohibited. The rules to exclude inadmissible evidence will be strictly implemented. Gradually reduce the number of crimes for which death penalty is applicable. Abolish the reeducation through labor system. Improve laws for the punishment and correction of unlawful and criminal acts as well as the community correction system. Improve the national judicial remedies system and legal aid system. Improve the mechanism for safeguarding lawyers' right to practice law and punishing them for professional misconduct. Focus more on professional ethics and let lawyers play their im-

portant role in safeguarding the legal rights and interests of citizens and legal persons.

The Third Plenary Session of the 18th CPC Central Committee will surely propel China's reform endeavor including the mission of building rule of law in China.

Chapter 51. Abolition of Reeducation Through Labor

Reeducation through labor consists of labor, education and skills training. It was not a criminal penalty governed by the criminal law adopted by the National People's Congress (NPC, the national legislature). Instead, it was a kind of administrative penalty based on the relevant regulations promulgated by the State Council. According to the regulations, public security organs have the authority to place suspects in reeducation centers without trial, with a maximum 4-year deprivation of personal freedom, forced labor and ideological education.

This system caused many problems in practice. In particular, its fundamental incompatibility with human rights and the rule of law grew increasingly obvious. The Resolution on Major Issues Concerning Comprehensively Deepening Reform adopted by the Third Plenary Session of the 18th CPC Central Committee on November 12, 2013 stipulated that the reeducation through labor system should be abolished.

On December 28, 2013, the NPC Standing Committee adopted the resolution that abolished the regulations and laws related to the system. The resolution stated that reeducation through labor rulings prior to this abolition would remain valid. From the date of the resolution, all those who were in custody would be released unconditionally.

By the end of December 2013, all the reeducation through labor centers in Beijing had been closed and all the detainees had been released. The system that had been in place for over 50 years was abolished.

Let's take a look back at the early days of the People's Republic of China.

On August 25, 1955, the CPC Central Committee issued the Direc-

tive on Completely Eliminating Hidden Counter-Revolutionaries, which stated that "Two methods should be used to penalize counter-revolutionaries and offenders detected in this movement, excluding those sentenced to death and those spared for minor crime, honest confession or meritorious conduct. One method is reform through labor with a term in prison. The other method is reeducation through labor, which applies to those who have not been sentenced with a term in prison. Although they are not expected to be kept in detention politically, they will add to unemployment if released. That is to say, although they will not be sentenced to prison terms nor deprived of freedom completely, they should stay in the same facilities to work for the country, and be paid accordingly."

After that, local reeducation centers were set up by provinces and cities. The national reeducation centers were set up by the Ministries of the Interior and Public Security.

On August 3, 1957, the State Council issued the Regulations on the Issue of Reeducation through Labor targeting idle lawbreakers with the capacity to work.

Within one year, over 100 reeducation through labor centers were set up. Counties, communes even production teams started to set up such facilities. Nearly one million people were reeducated this way nationwide.

In 1961, the Ministry of Public Security acknowledged that it had excessively expanded the scope of targets and detained some people who were not qualified for reeducation through labor. Some of them had been treated the same as criminals under reeducation through labor, who had died due to a heavy workload beyond their physical capacity.

Until 1979, there was no maximum time limit for reeducation through labor, the longest term being more than 20 years.

On November 29, 1979, the State Council promulgated the Supplementary Provisions on Reeducation through Labor, stating that the reeducation through labor system might limit or deprive the personal

freedom of citizens for a duration of 1-3 years, which could be extended one more year as necessary. In practice, however, there were often cases of repetitive reeducation through labor and civil rights were hardly effectively safeguarded.

On January 21, 1982, the State Council circulated the Tentative Measures for Reeducation through Labor issued by the Ministry of Public Security. The document stipulated that “all those who have fled their rural homes and committed crimes in cities, areas along railroads, and major factories and mines” are qualified and subject to reeducation through labor. The scope of reeducation was further expanded by some administrative regulations, judicial interpretations, and subnational or departmental regulations in some provinces, cities and districts. In practice, reeducation through labor became a penalty for those who handed out leaflets, engaged in prostitution, expressed free opinions and joined demonstrations.

Although the inception and evolution of the reeducation through labor system met the needs of social management to a certain extent, it severely ran against the rule of law and infringed human rights. As the rule of law and human rights protection progressed in China, the system had to be abolished. And its abolition was a victory for the rule of law.

Chapter 52. Detention of Huang for Reeducation

Huang Haibo was born on November 25, 1976 in Tianjin. A graduate from the Performing Arts School of Beijing Film Academy, he acted the leading role in *Beautiful Daughter-in-Law* in 2010, which won him the 28th Flying Apsaras Award and the 25th Golden Eagle Award for Best TV Series. He also played the leading role in another popular TV series *Let's Get Married!* that aired on November 16, 2013 and achieved record ratings. The final episode of this TV series ranked 1st on China Central Television and registered 4 billion clicks in total on 12 video streaming sites like youku.com, a new CTR record in 2013.

In 2013 and 2014, TV series starring Huang Haibo went viral in China. They were also popular in South America, Africa, South Korea and Russia. Chinese leaders had presented CDs of Huang's *Beautiful Daughter-in-Law* as gifts on visits to these regions and countries.

At 16:00 on May 15, 2014, Beijing police received information that an act of prostitution was taking place in a hotel in Chaoyang District. The police caught Huang together with a girl in the hotel. Huang made a full confession of prostitution.

At noon on May 16, Huang was transferred to a detention house. The next day, his agency apologized to the public.

On May 16, Beijing Municipal Public Security Bureau posted on its Weibo account that Huang had been held in administrative detention for prostitution. According to relevant regulations, he would be detained for 15 days till May 31.

On the morning of May 31, entertainment reporters waited at the detention house for Huang's release. Unfortunately, Huang didn't show up for the whole day. There was still no trace of him till midnight, when

the reporters sought information from the detention house. They were informed that according to relevant regulations, Huang had been issued with a further 6-month reeducation period because he had not been thoroughly reformed during the 15 days of administrative detention.

The case became a focus of public opinion, debate and comment.

At 23:29 on June 8, 2014, Huang's agent made the following post on his Weibo account: "Huang has indicated that he will not seek revision or appeal. He doesn't want anyone to sensationalize the incident, either. He has entrusted me to apologize and issue this statement: I made a mistake and accept the consequences. I am now determined to correct my wrongs and sincerely hope that all of you will pardon me and take it as a lesson!"

On November 30, 2014, Huang was released. He announced that he would not sue or appeal. On December 1, he traveled to the US on vocation. Since then, the Chinese pop star has not been seen in public.

Many law experts took the view that Huang's 6-month extra detention for reeducation was not well-grounded legally and that the punishment for him was wrong in both law and fact.

In terms of law, the detention was based on Article 7 of the Rules for Detention and Reeducation of People Engaged in Prostitution, subjecting those engaged in prostitution to penalties defined by Article 66 of the Law on Public Security Administration of the PRC. According to the article, "Those whose conduct was not serious enough to be issued reeducation through labor can be detained by public security organs." The penalty of detention would follow a ruling that reeducation through labor was unnecessary. But already on December 28, 2013 the NPC Standing Committee had abolished the laws and regulations concerning reeducation through labor. Since the penalty criteria had been abolished, on what ground did the police issue an order of detention for reeducation?

The police claim that Huang had not been thoroughly reformed during his 15-day detention was not well-grounded either. By what criteria was Huang not thoroughly reformed? Had he continued to engage prostitutes while in detention?

Based on the above, dozens of law experts filed a petition with the State Council calling for the abolition of the Regulations on Detention and Reeducation of People Engaged in Prostitution. Media reports indicate that at present, only six provincial authorities have retained this reeducation system, while 25 other provincial authorities have never implemented this system. With the expansion of the rule of law in China, the abolition of this reeducation system can be anticipated. If that should happen, Huang's case would push the rule of law in China another difficult step forward.

Chapter 53. Electoral Corruption in Hengyang

Hengyang, a prefecture-level city, is situated to the south of the Hengshan Mountains, Hunan Province, China.

From December 28, 2012 to January 3, 2013, the First Session of the 14th Hengyang People's Congress was held, attended by 527 local deputies. In the competitive election of Hunan Provincial People's Congress deputies, 56 provincial-deputy-elects were engaged in bribery in cash or kind for 518 local deputies and 68 staff members of the local People's Congress. The total sum involved stood at over 110 million yuan.

The relevant authorities, including departments of the CPC Central Committee and CPC Hunan Provincial Committee, received information from insiders. The reports attracted the highest attention of the CPC Hunan Provincial Committee, which immediately ordered an investigation by its commission for discipline inspection. Preliminary facts and evidence were quickly collected during the investigation.

In the first ten days of April, a preliminary investigation report was forwarded to the CPC Hunan Provincial Committee. The committee was convinced that it was a severe case which merited a thorough investigation. An investigation leading group headed by the leader of the CPC Hunan Provincial Committee was set up, along with a special investigation task team from the Discipline Inspection Commission of the committee.

The plenary session of Standing Committee of Hunan Provincial People's Congress at the end of December 2013 ruled that the Hengyang election of 56 provincial deputies should be invalid according to law. A public announcement was made. The standing committees of the people's congresses at different levels in Hengyang held meetings on De-

ember 28 and accepted the resignation of the 512 local deputies who had been involved.

On August 18, 2014, Beijing No.2 Intermediate People's Court and 12 courts in Hunan Province issued first-instance judgments on all the defendants. Tong Mingqian, former vice chairman of CPPCC Hunan Provincial Committee, secretary of CPC Hengyang Municipal Committee, and leader of the reelection leading group of Hengyang People's Congress, was sentenced along with 68 others to imprisonment, detention or deprivation of political rights.

Money can act like a virus in politics. The Hengyang electoral corruption was an unfortunate case. We must draw lessons from it to prevent any such scandal from ever happening again anywhere in China.

To prevent that from happening again, we should firstly use disciplined procedures. Secondly, we should constantly improve election institutions. We must employ the rule of law to effectively prevent and severely punish corruption in elections, so that elections serve as a platform for people to voice their will, a stage for fair play among politicians, and a cradle that nurtures excellence.

Chapter 54. A Major Decision

On October 14, 2014, *People's Daily* posted an article in its WeChat account titled “Preview of the Fourth Plenary Session: Law-Based Governance Upgraded to Version 2.0”, which states:

“It has been 17 years since the 15th CPC National Congress put forward the basic strategy that ‘the governance of China should be based on law’. In the past 17 years, China has made highly-recognized achievements in building the country under the rule of law, an important symbol of which is the formation of a socialist legal system with Chinese characteristics. It has been a remarkable achievement, but people do not settle for this, since the legal system still has loopholes and inconsistencies, and more importantly, some of the laws formulated through great efforts have not been well implemented. All of the economic and social maladies, such as corruption, environmental pollution, toxic food, jerry-built projects, high crime rates, have been caused by legal loopholes or slack law enforcement.”

How will China forge ahead on the journey of the rule of law? The entire nation is watching closely.

On October 20, 2014, the Fourth Plenary Session of the 18th CPC Central Committee was held in Beijing. It was a special plenary session on the basic strategy of governing the country in accordance with the law. It was the first meeting of its kind in the history of the Communist Party of China, the People's Republic of China, and the Chinese nation. The major achievement of this plenary session was the Resolution of the CPC Central Committee on Certain Major Issues Concerning Comprehensively Advancing the Law-Based Governance of China. The document dealt with three areas of law-based governance.

The first part provides an executive summary. This part states that China will adhere to the path of socialist rule of law with Chinese characteristics, build a system of socialist rule of law with Chinese characteristics, and build a socialist country under the rule of law. It expounds on the significance, guiding philosophy, general objectives, and basic principles of comprehensively advancing the rule of law. It also expounds on building a system of socialist rule of law with Chinese characteristics, and some major issues such as the relationship between the Party's leadership and the rule of law.

The second part covers chapters 2 to 5. Starting from the basic framework of the work on the rule of law, this part discusses well-conceived legislation, strict law enforcement, impartial justice and universal observance of the law.

Chapter 2 discusses improving the system of socialist rule of law with Chinese characteristics that positions the Constitution at the core, and strengthening enforcement of the Constitution in four respects – improving the enforcement and supervision system of the Constitution, improving the legislative system, further promoting well-conceived and democratic legislation, and strengthening legislation in key areas.

Chapter 3 is about six aspects of promoting administration in accordance with the law and building a government under the rule of law: implementing government functions in accordance with the law, improving the decision-making mechanism in accordance with the law, deepening the reform of the administrative law enforcement system, maintaining strict, standardized, impartial and non-abusive law enforcement, strengthening the restriction and oversight of administrative power, and increasing government transparency.

Chapter 4 is about six aspects of judicial justice and improving the public credibility of the judiciary: perfecting the system of ensuring the independent and fair exercise of judicial power and procuratorial au-

thority in accordance with the law, optimizing the allocation of judicial power, promoting strict judiciary, ensuring the participation of the people in judiciary, strengthening the judicial guarantee of human rights, and strengthening oversight over judicial activities.

Chapter 5 is about four aspects of enhancing public understanding of the rule of law and building a society ruled in accordance with law: promoting universal awareness of the rule of law in the whole society, promoting multi-level and multi-disciplinary governance in accordance with law, building a complete system of legal services, and improving the mechanism for protecting rights and resolving disputes in accordance with the law.

The third part of the resolution is composed of chapters 6 and 7 and the conclusion.

Chapter 6 deals with three aspects of creating a better workforce: building high-quality forces specialized in the rule of law, strengthening the development of legal service forces, and building innovative personnel training mechanism for the rule of law.

Chapter 7 is about seven aspects of strengthening and improving the Party's leadership in comprehensively advancing law-based governance: exercising state power in accordance with the law, strengthening the Party's internal laws and regulations, improving Party officials' understanding of the rule of law and their ability to act by law, promoting the rule of law in governance at the primary level, administering the army strictly in accordance with the law, safeguarding the "One Country, Two Systems" principle in practice and the reunification of the motherland, and strengthening work on foreign-related laws.

The Conclusion calls on all Party officials and people of all ethnic groups in the country to dedicate themselves to the rule of law in China.

The rule of law in China is significantly different from that in Western countries. The rule of law in Western countries is of spontaneous

generation, while the rule of law in China is of artificial construction. Therefore, some scholars call the Western rule of law an endogenous rule of law and the Chinese rule of law a constructive rule of law. For the constructive rule of law in China, the advocacy of political power has been an essential and natural measure. In the historical process of the initiation and development of the contemporary Chinese rule of law, we can clearly see such a trajectory and footprint. Therefore, the ruling party and the political authorities must shoulder the historical responsibility of building the rule of law, and be bold in their actions. However, we should pay attention to how it can be promoted effectively to reduce the resistance to the development of the rule of law.

The initiative to promote law-based governance in an all-round way means that the rule of law in China has entered a new era. The adoption of the resolution marks a new chapter and a new milestone for the rule of law in China.

Chapter 55. Judicial Reform

The judiciary is of critical importance to every country and to every citizen as the ultimate embodiment of legal justice and the ultimate guarantee of social justice. Although not everyone is exposed to the judiciary or to litigation, good justice is the precondition for the safety and happiness of every citizen, the foundation of long-term stability in every country and the guarantee of fairness and justice in every society. As British philosopher Francis Bacon noted, the negative outcome of an unfair trial is even severer than ten crimes, for crime ignores the law, which can be compared to polluting the water, while unjust trials destroy the law, which can be compared to polluting the source of water.

Without a good judicial system, there can be no good judiciary. Deepening reform of the judicial system is the fundamental way to promote good judiciary and realize social justice.

A round of reform of the judicial system was initiated in China from the 15th CPC National Congress in 1997 and continuously promoted over 20 years through the 16th, 17th and 18th CPC National Congresses.

The 18th CPC National Congress once again made plans for reform of the judicial system. The Third Plenary Session of the 18th CPC Central Committee included judicial system reform in its resolution as part of the overall institutional reform. The Fourth Plenary Session of the 18th CPC Central Committee adopted the Resolution of the CPC Central Committee on Certain Major Issues Concerning Comprehensively Advancing the Law-Based Governance of China, which outlines the future model of the Chinese judicial system and makes lists of reforms. There are ten aspects to the reform of the judicial system currently under way:

First, ensure judicial justice. The objective of judiciary is fairness and justice. Judicial justice has three dimensions. The first is that judiciary itself must be fair and just, the second is that judiciary must maintain social fairness and justice, and the third is that judiciary must make the people feel a sense of fairness and justice. The resolution of the Third Plenary Session of the 18th CPC Central Committee suggested that “we should deepen reform of the judicial system, accelerate the building of a socialist judicial system featuring justice, efficiency and authority, safeguard people’s rights and interests, so that the people feel a sense of fairness and justice in every case.” The resolution of the Fourth Plenary Session of the 18th CPC Central Committee suggested that “we should improve the system of judicial administration and the operating mechanism of judicial power, standardize judicial behavior, and strengthen the supervision of judicial activities, for the people to feel a sense of fairness and justice in every case.” Those are lofty and realistic goals, which serve as the starting point and ultimate purpose of judicial reform and the measure of its success or failure.

Second, reform the administrative system. China’s ongoing judicial system reform is first and foremost a reform of the administrative system. According to the plans of the CPC Central Committee, China is promoting the unified administration by subnational courts and procuratorates at provincial level and below, and transforming the existing four-level administrative system of the central authority, provinces, prefectures and counties into a two-level administrative system at the central and provincial levels. In terms of staffing, future judges and prosecutors will be identified by the provincial selection committees and appointed by People’s Congresses at different levels in accordance with legal procedures. The financing of courts and procuratorates at the provincial level and below will be budgeted by the provincial financial authority.

Third, optimize the allocation of authority. China will focus on opti-

mizing the allocation of judicial powers, and improving the mechanisms for division of labor and individual responsibility, mutual coordination, and mutual restraint. Public security organs, procuratorial organs, judicial organs, and judicial and administrative organs perform their duties to achieve mutual coordination and mutual restraint of investigative power, procuratorial power, judicial power, and executive power. The customary precedence order of public security organs, procuratorial organs and people's courts will be changed into people's courts, procuratorial organs, public security organs, and judicial administrative organs. According to the new design, the judicial administrative organs are likely to obtain full execution rights, including the execution of the penalty for criminal judgment and the civil execution rights related to civil judgments. They are also likely to be granted administrative power regarding judicial administrative affairs.

Fourth, exclude internal and external interventions. It has always been a big headache in China to eliminate interference from inside and outside the judiciary and ensure judicial independence. In this reform, a three-pronged comprehensive management is adopted. One is to establish a system to prevent external intervention. That is to establish a record, notification and accountability system for leading officials who intervene in judicial activities and specific cases. Leading officials who intervene in the operation of judicial organs will be punished in accordance with Party and administrative discipline; if any wrongful convictions or other serious consequences result, criminal responsibilities will be investigated in accordance with the law. This measure will effectively restrict external interference with the judiciary, and ensure the independence of the judiciary. The second is to establish a system to prevent internal interference. That is to say, insiders in the judicial organs are not allowed to violate the regulations by interfering with cases that others are handling. A record system and accountability system for internal interference will

certainly ensure the independence of the judiciary inside the organ. The third is to establish and improve the protection mechanism for judicial personnel to perform their statutory duties and to provide special occupational security for them. Judges and prosecutors cannot be transferred, dismissed, removed from office or downgraded for non-statutory reasons or through non-legal procedures.

Fifth, implement strict judicature. The system of strict judicature firstly requires judicial personnel to rely on facts and the law. A legal system should be established to keep conformity to objective truth in its fact finding, to justice in the process of handling cases, and to substantive justice in the outcome of handling cases. Secondly, it requires the reform of the legal process with trial at the core, so as to ensure that the factual evidence of the case under investigation, review and prosecution can withstand the test of the law. The third is to clarify the duties, work flows, and work standards of various judicial personnel from the dimension of institution, and to implement the lifelong responsibility system for handling cases and the accountability system for misjudged cases. Strict judicature means ensuring that a case can withstand legal and historical scrutiny, and its purpose is to effectively avoid wrongful convictions and ensure justice.

Sixth, promote judicial disclosure. Judicial disclosure is determined and required by the people, society, and the public. Judicial disclosure requires an open, dynamic, transparent and convenient judicial mechanism in the light of day. It requires open trials, procuratorial affairs, and police and prison affairs, to disclose the judicial basis, procedures, processes, results, and legal documents in force in a timely way, and to eliminate under-the-table practices. A comprehensive system for unified public access to effective legal documents on the internet should be established. In addition, the people's jury system must be improved to enhance the transparency and credibility of the judiciary. We need to safeguard cit-

izens' jury rights, expand the scope of participation, improve methods for random selection, and adopt scientific and open selection methods to improve the credibility of the people's jury system. People's jurors should no longer hear issues on the application of laws but participate solely in fact finding. This is an important reference for the successful experience in the rule of law in the world, and it will certainly promote the transformation and upgrading of the Chinese jury system.

Seventh, strengthen human rights protection. Justice is an important guarantee of human rights. To this end, the first requirement is to strengthen the institutional guarantee on behalf of clients and others involved in lawsuits, to secure their right to information, their right to make statements, their right to defend and debate, their right to apply to the legal system, and their right to appeal in litigation. The second is to improve and implement the principle of legality, that the benefit of the doubt goes to the defendant, and exclusion of illegal evidence. Cracking down effectively on crimes and sanctioning illegal actions is an important guarantee for human rights, as is avoiding wrongful convictions, neither of which can be neglected. It is necessary to use the judiciary to protect human rights and to protect human rights in the judicial process.

Eighth, strengthen judicial supervision. The first requirement is to standardize in law the contact and interaction between judicial personnel and clients, lawyers, special relations, and intermediary organizations. Judicial personnel are strictly prohibited from contacting clients and lawyers in private, disclosing or investigating the case, accepting offerings in kind, introducing agents and defense services for lawyers, and other violations. Resolute efforts should be exerted to punish judicial interference, to prevent the transmission of interests and judicial corruption, and to ensure judicial justice. The second is to improve the legal supervision of the people's procuratorial organs on criminal, civil and administrative litigation. The third is to improve the supervision of law enforcement ac-

tivities of procuratorial organs, such as filing, custody, seizure of frozen property, and prosecution. The fourth is to regulate media coverage of cases, both preventing public opinion from affecting judicial justice, and also achieving strong oversight of the judicature by the press and public opinion.

Ninth, reform the personnel system. The reform of the personnel system is a significant component of the reform of the judicial system. First, it implements classified management of the staff of the judicial organs by distinguishing the judicial officials from the administrative and auxiliary personnel of the judicial department and implementing different management systems. Second, it establishes a system for unified recruitment and orderly exchange of judicial personnel. This is a practical requirement to promote a standardized, expert and professional team under the rule of law. The third is to conduct a selection of judges and prosecutors from different levels. This ensures that the judicial officials of the higher-level judicial organs come from subordinate judicial organs, so as to ensure greater authority and credibility of superior judicial officials. Fourth, it guarantees occupational security for judicial personnel. This covers aspects such as position, status, and salary, thus eliminating the worries of the judiciary and render them due respect.

Tenth, complete legal services. Improving the legal service system is an essential requirement for the reform of the judicial system. Without a corresponding service system, it will be difficult to reform the judicial system or achieve expected results. The first requirement is a complete legal service system covering both urban and rural residents. The second is to improve the legal aid system. In addition to traditional legal fee reduction and the provision of legal assistance, the system of lawyers' agency should be gradually implemented for complaints against the judicial authorities' judgments and decisions. Clients who need a defense lawyer but cannot afford one, and plaintiffs unable to pay for lawyers should

be included in the scope of legal aid. The third is to improve the judicial assistance system. The fourth is to strengthen the lawyer team with social lawyers, public lawyers and company lawyers, which can produce complementary advantages under a rational structure.

Chapter 56. National Constitution Day

National Constitution Day is an important anniversary established in many countries around the world. Let's have a look at different countries in chronological sequence.

May 3 is the National Constitution Day of Poland, when various celebrations take place in the Polish capital, Warsaw. The President lays a wreath at the Monument of Unknown Heroes and holds a Medal of Honor Ceremony at the presidential palace. The Polish diaspora also celebrate the Constitution Day of their native country.

May 17 is the National Constitution Day of Norway, when thousands of Norwegians wear traditional costumes – including long skirts embroidered with colorful flowers and beautiful patterns for the ladies – and engage in a holiday parade in the capital Oslo. The school bands from different areas, followed by the local residents, gather at the center of the city early in the morning for the parade towards the Royal Palace at 10 o'clock, singing and dancing enthusiastically.

September 17 is the National Constitution Day of the US, when American federal institutions provide educational materials to their employees. All educational institutions receiving federal grants are required to organize educational programs on the US Constitution. The naturalization ceremony for new citizens who immigrate to the United States usually takes place on this special day. The President of the United States also delivers a speech on this important anniversary.

December 10 is the National Constitution Day of Thailand. On this day, public service officials, politicians, and representatives of the general public participate in an event to commemorate the first democratic constitutional campaign led by the Seventh Emperor of Thailand in 1932.

People gather in front of the Seventh Emperor's Icon Monument in the Capitol Square and lay wreaths in his memory. Members of the Thai royal family also go to the Capitol to dedicate wreaths.

December 12 has been celebrated as the National Constitution Day of Russia and a public holiday since 2005. Official departments and agencies organize various celebrations, from the presidential speech to mass parades, and even the finals of the "Miss Constitution" pageant. Various festival activities are designed to give Russian citizens a greater understanding of the legal role of the constitution. On December 12, 2008, Russia held a grand competition at the Red Square in Moscow and selected the country's first "Miss Constitution". In 2013, President Putin specifically chose to make his annual state-of-the-nation address to the Federal Council on the Russian National Constitution Day.

China has also got its own National Constitution Day.

On October 23, 2014, the resolution of the Fourth Plenary Session of the 18th CPC Central Committee suggested that December 4 should be the National Constitution Day. On November 1, 2014, the Eleventh Session of the Standing Committee of the 12th National People's Congress adopted the resolution on the establishment of the National Constitution Day, which stated:

"On December 4, 1982, the Fifth Plenary Session of the 5th National People's Congress adopted the current Constitution of the People's Republic of China. It is the inheritance and development of the first Constitution formulated in 1954. The Constitution is the fundamental law of the country and the general statute on the ruling and stabilization of the state. It has the highest legal status, legal authority and legal effect. The full implementation of the Constitution is the primary task and basic work for comprehensively promoting the rule of law and building a socialist country under the rule of law. People of all ethnic groups, all state organs and armed forces, political parties and public organizations,

as well as enterprises and government institutions, are required to take the Constitution as the basis for their activities and perform duties to safeguard the dignity of the Constitution and guarantee the implementation of the Constitution. No organization or individual has the privilege of transcending the Constitution and the law. All violations of the Constitution and the law will be investigated. In order to enhance the awareness of the whole society, carry forward the spirit of the Constitution, strengthen the implementation of the Constitution, and comprehensively promote the rule of law, the Eleventh Session of the Standing Committee of the 12th National People's Congress has decided to designate December 4 as the National Constitution Day. The state will organize various activities for constitutional publicity and education."

On the afternoon of December 3, 2014, a symposium on carrying out publicity and education to promote the spirit of the Constitution was held by the Publicity Department of the CPC Central Committee, the General Office of the NPC Standing Committee, and the Ministry of Justice.

The symposium conveyed General Secretary Xi Jinping's instructions on the first National Constitution Day, which included taking the opportunity of the establishment of the National Constitution Day to carry out in-depth publicity and education, carrying forward the constitutional spirit, strengthening constitutional awareness, and promoting the full implementation of the Constitution for it to play a major role in building a moderately prosperous society in all respects, comprehensively deepening reform, and comprehensively promoting the rule of law.

China's National Constitution Day has been celebrated annually since December 4, 2014.

Chapter 57. Miscarriage of Justice

At about 19:45 on the evening of April 9, 1996, Miss Yang left the Qianlixiang Hotel in Xilin South Road, Hohhot, saying that she was going to a public lavatory adjacent to the First Woolen Factory. At 21:15, she was found strangled in the lavatory.

After dinner that same evening, Hujiltu parted from his colleague Yan Feng. Hearing someone crying for help in the women's lavatory, Hujiltu returned to his factory and asked a fellow worker to go with him to see what was happening. Finding Yang against the partition wall, they immediately ran to a nearby police station and reported the case, after which the police started a prompt investigation.

The police suspected that Hujiltu was the murderer and arrested him. The People's Procuratorate of Hohhot subsequently charged him with intentional homicide and indecent assault. The Intermediate People's Court of Hohhot issued a judgment on May 17, 1996, convicting Hujiltu of intentional homicide and indecent assault, and sentencing him to death with deprivation of political rights for life.

After the verdict was pronounced, Hujiltu appealed on the grounds that he had no intention for the murder. He also appealed for leniency in the sentence. The Higher People's Court of Inner Mongolia Autonomous Region returned a verdict on June 5, 1996, dismissing his appeal and upholding the original judgment. In accordance with the provisions of the approval procedure for death penalty cases at that time, Hujiltu was condemned to death for intentional homicide with deprivation of political rights for life. On June 10, 1996, he was executed.

It was only 62 days from the crime to the execution of the defendant. A series of criminal proceedings, including the first trial, the second

trial, the approval of the sentence and the execution itself, took only two months.

Early in 2005, several cases of rape and murder occurred in the Ulanqab League, Inner Mongolia. The police confirmed that they were all committed by the same person. On October 23, Zhao Zhihong was arrested as a serial suspect. He confessed to the 1996 rape and murder, and accurately identified the location of the killing, although the lavatory had been demolished and rebuilt. He was even able to provide details such as the orientation of the lavatory, the internal structure, the height and age of the victim, the way in which he had strangled the victim, and the location of the body. He had clear and affirmative memories of all the details. The confession made by Zhao Zhihong was far more accurate than that given by Hujiltu, who had been executed ten years before.

In March, 2006, the Committee of Political and Legal Affairs in the Inner Mongolia Autonomous Region formed a review team to look into the case.

In August, 2006, the review concluded that the Hujiltu case was indeed a miscarriage of justice.

On November 19, 2014, the Higher People's Court of Inner Mongolia Autonomous Region decided to order a retrial of the case.

On November 20, 2014, the Higher People's Court of Inner Mongolia Autonomous Region sent a notice of retrial to Hujiltu's parents.

On December 15, 2014, the Higher People's Court of Inner Mongolia Autonomous Region pronounced that the defendant in the original trial, Hujiltu, was not guilty.

The poor parents of Hujiltu experienced more than eight years of pain on the long road to redress an injustice for their son. It is hard to imagine how much they had suffered. The journey of petitioning was full of bitterness and tears.

All those involved in the law enforcement and the legal process in

the misjudged case of Hugjiltu have been subject to due legal sanctions. However, the pain that the case brought to Hugjiltu's family and the society will be deep and long-lasting. China must conduct reform of the judicial system and prevent the occurrence of such miscarriages of justice from the source. In this way, the redressing of the Hugjiltu case can have its proper impact. To prevent such tragedies from recurring is an essential and sincere expectation.

Chapter 58. Pledging Allegiance to the Constitution

It is a universally adopted institution that public servants take an oath to the constitution when they assume office. Among the 193 countries around the world with a written constitution, 177 countries explicitly make specific provisions on pledging allegiance to the Constitution.

Haidian District in Beijing took the first step in this direction on the Chinese mainland. In 2009, some deputies of the People's Congress of the district proposed to its Standing Committee that newly-appointed officials of the government, procuratorate and court should take an inaugural oath, so as to strengthen the awareness that their power is endowed by the people.

On February 13, 2009, the Standing Committee of the People's Congress of Haidian District adopted a resolution on inaugural oath. According to the resolution, all the government officials appointed by the People's Congress of the district should take an inaugural oath. On the same day, the newly-appointed deputy head and deputy procurator-general of the district took the inaugural oath in front of all the members of the Standing Committee of the People's Congress of the district, some of the deputies attending the People's Congress of the district and representatives of the general public. Since then, the inauguration ceremony has taken place regularly.

At the national level, following the establishment of the National Constitution Day, the Standing Committee of the National People's Congress adopted a resolution on the institution of pledging allegiance to the Constitution on July 1, 2015. The logic is that the Constitution, as the fundamental law of the country and the general charter for adminis-

tering state affairs properly and ensuring national security, has the highest legal status, legal authority and legal effect. Public servants must establish a sense of the Constitution, abide by constitutional principles, carry forward the constitutional spirit, and fulfill constitutional missions. To demonstrate the authority of the Constitution, to inspire and educate the public servants to be loyal to the Constitution, to abide by the Constitution, to uphold the Constitution, and to strengthen the implementation of the Constitution, the Standing Committee of the 12th National People's Congress adopted the following resolution:

“All public servants elected or appointed by people's congresses at all levels and their standing committees above the county level, as well as state functionaries appointed by people's governments, courts and procuratorates at all levels, should take a public oath of allegiance to the Constitution while taking office.”

The oath was revised and improved by the 12th Standing Committee of the National People's Congress in February 2018. The new oath consists of 75 Chinese characters as the following:

“I pledge my allegiance to the Constitution of the People's Republic of China to safeguard the constitutional authority, fulfil my legal obligations, be loyal to the country and the people, be committed and honest in my duty, accept the people's oversight and work for a great modern socialist country that is prosperous, strong, democratic, culturally advanced, harmonious, and beautiful!”

All laws require a specific form of existence and a path of implementation, and the Constitution is no exception. Any constitution or law, if not implemented, is of no value at all for the society to improve or benefit. Although the National Constitution Day and the institution of pledging allegiance have been in place, they are only symbolic forms of

the existence of the Constitution. There is still a long way to go before its actual implementation.

The role of the Constitution will not be fulfilled until the country is really governed by the Constitution. To ensure the full role of the Constitution under the rule of law, a constitutional judicial system, including a constitutional review mechanism, has to be established.

Chapter 59. Hunting for Fugitives Abroad

According to a news release on the website of the CPC Central Commission for Discipline Inspection, on July 13 and 15, 2016, Zhu Haiping and Guo Liaowu, who were listed in an Interpol red notice as among the 100 fugitives, returned from the United States and Australia respectively and surrendered to the police.

From January to June 2016, China recovered 381 fugitives from more than 40 countries and regions, including 57 former public servants, and recovered 1.24 billion yuan of illicit money.

Fu Yaobo, No. 39 on the fugitive list, was the former chief of Case Trial Section of Labor and Social Security Monitoring Detachment in Benxi City, Liaoning Province. Arrested in St. Vincent and the Grenadines in February 2016 on suspicion of corruption, he wrote in his confession letter:

“During the 16 months of flight, I was suffering every day in fear, illness, and homesickness. Now I deeply regret having chosen to flee abroad instead of surrendering promptly. I want to say to people who are still hiding abroad that the days of overseas flight are endless and hopeless.”

In April 2016, the anti-corruption operation code-named “Sky Net” continued, with the Ministry of Public Security leading the “Fox Hunt” [overseas operation], the Supreme People’s Procuratorate leading a special campaign to repatriate those accused of international crimes, and emanating illicit money from such crimes, the People’s Bank of China and the Ministry of Public Security leading a crackdown on offshore firms and illegal banks transferring illicit money overseas. In line with the implementation of the Regulations of the Communist Party of China on

Disciplinary Action, the Organization Department of the CPC Central Committee, the Ministry of Foreign Affairs, the Ministry of Public Security, and the Central Commission for Discipline Inspection carried out a special campaign against the violation of the regulations on traveling abroad (cross-border).

Interpol red notice is a notice for fugitives subject to an arrest warrant from the legal department in one country, requesting extradition of fugitives by another member country. The document is jointly issued by the director of the Interpol Central Bureau of the host country and the secretary-general of Interpol General Secretariat. The document itself is recognized as an international certificate that can be used for temporary detention with the legal effect of actual enforcement.

In January 2001, the Supreme People’s Procuratorate and the Ministry of Public Security organized a video conference to outline a plan for the pursuit of suspects who were guilty of crimes of malfeasance such as corruption and bribery. Xinhua News Agency broadcast a news item saying, “There are currently more than 4,000 individuals suspected of corruption and bribery in possession of more than 5 billion yuan of public funds. Some of them have fled overseas, causing a substantial loss of state-owned assets, threatening the survival of some state-owned companies and enterprises, and doing serious harm to the society.”

In 2004, the Research Institute of MOFCOM published a report on the offshore financial centers as the “transit station” of the capital in flight from China. The report stated that “4,000 corrupt Chinese officials have fled overseas since the beginning of reform and opening up, draining a total of about 50 billion US dollars, with an average of 100 million yuan each.”

At the end of 2008, the Beijing People’s Procuratorate reported that since the mid-1990s, 16,000 to 18,000 officials had fled the Chinese mainland, draining 800 billion yuan. By that time, China had issued more

than 800 arrest warrants through Interpol, but not many of the fugitives had been repatriated. Statistics show that 20 to 30 cases of malfeasance were handled by the Supreme People's Procuratorate every year, but only five fugitives had been repatriated.

On July 22, 2014, the Ministry of Public Security launched "Fox Hunt 2014", which was a special campaign focused on arresting suspected economic fugitives overseas. By the end of the year, China had arrested more than 400 economic criminals in 60 countries and regions, including 32 fugitives who had lived abroad at large for more than 10 years.

In April, 2015, Chinese authorities launched the "Sky Net". Supported by Interpol, the China National Central Bureau issued a red notice to pursue 100 suspected criminals and those involved in major corruption cases having fled to various places around the world. At the same time, the Chinese government publicized relevant information about these suspects. Through Interpol and other channels, it urged the relevant national law enforcement agencies to strengthen cooperation and assist in bringing the suspects to justice. It also indicated that the list announced represented only a part of the full list of suspects.

According to statistics released at the beginning of 2016, China has achieved significant results in the operation in 68 countries and regions during the first 11 months of 2015. In these international operations, 863 suspects were repatriated, including 102 from developed countries in European countries and the US. Among these suspects, 196 used to be Party members and public servants. Eighteen of the 100 listed in the red notice have already been repatriated. On January 1, 2016, Pei Jianqiang, the No. 10 suspect on the list, was arrested and repatriated.

These actions and data demonstrate China's determination in fighting corruption. It also demonstrates how difficult it is to work with the international legal agencies to this end. The red notice is an international

tool for arresting and extraditing fugitive suspects, but it does not mean that countries receiving the red notice are obliged to execute it or extradite the suspects. It's often quite complicated.

Domestically, China is facing both legal and political problems. If it should not pursue the fugitives outside its borders, the fugitives would not be brought to justice and the potential criminals would not be deterred as they should be, which would undermine the people's confidence in the fight against corruption and damage China's image on the international stage.

Such indulgence to abuse of power also damages the rule of law and people's rights. However, the efforts to repatriate fugitives from abroad is extraordinarily difficult for a variety of reasons, which will continue to be a big challenge for China.

This has to do with a major international legal institution – international criminal assistance in jurisdiction. In December 2000, China enacted the Extradition Law of the PRC, after which it signed bilateral treaties of extradition with more than 20 countries. China strengthened its cooperation with Interpol and issued a considerable number of red notices. However, China has not signed the extradition agreement with many other countries, and resulting problems can only be solved through more complex procedures.

It is a major challenge for China to pursue the suspects abroad with the help of international criminal assistance in jurisdiction, or red notices. As a matter of fact, a far more arduous and essential task is to eliminate corruption in terms of institutions, systems and mechanisms. The fundamental solution to the problem is deeper reform of political institutions, popular democracy, and the rule of law, to create the conditions to prevent and eliminate corruption.

Chapter 60. Presumption of Nie's Innocence

Nie Shubin was born on November 6, 1974 in Niezhuang Village of Hebei Province. He was an employee in the metallurgical machinery factory in Shijiazhuang, the provincial capital.

On September 23, 1994, Nie was captured by the local police as a suspect in a criminal case of rape and homicide. He was taken into custody on October 1, 1994. On October 9, his arrest was approved by the People's Procuratorate for suspected crimes of intentional homicide and rape.

On December 6, 1994, the People's Procuratorate of Shijiazhuang City filed a public prosecution against Nie. The Intermediate People's Court of Shijiazhuang City heard the case in a private session in accordance with the law.

On March 15, 1995, a criminal and incidental civil judgment was issued, asserting that "At about 17:00 on August 5, 1994, Nie Shubin followed Kang, a female worker of Shijiazhuang Hydraulic Parts Factory, who had just finished her work, on a bicycle. At the middle section of Shifen Road in Kongzhai Village, Nie deliberately knocked Kang down and dragged her into the cornfield on the east side of the road, where he punched her head and face and raped her once she was unconscious. Afterwards, he strangled Kang to death with his jacket."

The judgment found Nie guilty of both crimes, sentenced him to death, and deprived him of political rights for life.

Nie refused to accept the judgment and appealed to the Higher People's Court of Hebei Province. On April 25, 1995, the Higher People's Court of Hebei Province made a second-instance criminal and incidental civil judgment. Although finding that the verdict on the crime of rape

was excessive, the court confirmed the sentences of death and deprivation of political rights for multiple crimes.

On January 17, 2005, Wang Shujin, a fugitive on the online wanted list issued by the Hebei Provincial Public Security Bureau, was arrested by the police of Xingyang City, Henan Province. Except for a number of cases of rape and murder in Guangping County, Wang also claimed to have raped and killed a young woman in the cornfield near Fangtai Village in the western suburbs of Shijiazhuang. He identified himself as the perpetrator of Nie's case.

On March 12, 2007, the Intermediate People's Court of Handan City, Hebei Province made a first-instance judgment, sentencing him to death for intentional homicide and rape with the deprivation of his political rights for life. Wang refused to accept the judgment and appealed to the Higher People's Court of Hebei Province.

On September 27, 2013, the Higher People's Court of Hebei Province issued a second-instance verdict, which concluded that since Wang's confession was inconsistent with the evidence for the case of rape and murder in the western suburbs of Shijiazhuang, he could not be confirmed as the perpetrator. Wang's appeal was dismissed and the original judgment was upheld for the crimes he had committed. The judgment was reported to the Supreme People's Court for approval.

On December 12, 2014, the Supreme People's Court authorized the Higher People's Court of Shandong Province to review the original trial of Nie's case [cross-regional jurisdiction of crime cases to prevent the interference of local forces]. On April 28, 2015, the court held a hearing on the case. The hearing lasted over 10 hours, during which five judges of the review and collegiate panel listened to the opinions expressed by the declarant and his attorneys, and representatives of the court of original trial. The court invited 15 representatives of the public as the jury of the hearing. The collegiate bench also gained a better understanding of

the case.

On June 6, 2016, the Supreme People's Court decided to review Nie's case and conduct a retrial in accordance with the trial supervision procedure. On December 2, 2016, the Second Circuit Court of the Supreme People's Court pronounced a public judgment on the case, which stated: The original trial finding that Nie Shubin committed the crime of intentional homicide and rape was based on Nie's confession of guilt which was consistent with other evidence for the case. However, on the whole, there was lack of objective evidence to confirm Nie's crime. Uncertainties included the exact time when Nie committed the crime, the source of the tool used for the suspected crime – the jacket, as well as the time and cause of victim's death. Missing evidence included the interrogation record on Nie's narration for the first five days after Nie's detention, the interrogation record on the narration of several important witnesses for the first 50 days after the day of the crime, as well as significant original documentary attendance records. There were still uncertainties about the authenticity and reliability of Nie's confession of guilt, the consistency between his confession and other documented evidence, and the possible involvement of other criminals. The evidence as the basis of the original judgment did not form a complete chain, failing to reach the statutory standard with adequate and authentic evidence or to meet the conviction requirements of clear facts and certain evidence. The facts of the original trial that Nie was guilty of intentional homicide and rape were unclear and the evidence was insufficient. According to the relevant provisions of the 1979 Criminal Procedure Law of the PRC, Nie should not be found guilty. The court accept the opinions proposed by the declarant, his attorney and the Supreme People's Procuratorate that Nie should be acquitted of the crime. The final judgment is this: The original judgment be revoked and Nie Shubin be acquitted of the crime.

On the morning of December 11, 2016, Nie's family signed an

agreement with two lawyers who would apply for state compensation on their behalf. On the afternoon of the December 14, Nie's mother Zhang Huanzhi, submitted the application for state compensation to the Higher People's Court of Hebei Province, claiming a total of 13.91 million yuan in compensation. On the same day, the Higher Court of Hebei Province decided to put the case on record. The application submitted by the Nie's showed that there were altogether seven claims for compensation of 13.91 million yuan.

The state compensation claim has yet to be judged by the court, but the criminal case has been closed.

The retrial of the case acquitted the defendant on the basis of presumption of innocence and the rule of law. The original trial and retrial of this case and its unique features will figure in the history of the rule of law in China.

Chapter 61. Limit of Law Enforcement

Theories of the rule of law can be worked out by jurists, but the practice of the rule of law is an objective reality, as documented through various cases or legal precedents. One action far exceeds a dozen declarations. If judicial authorities handle every case properly, the rule of law will prosper. The process of handling each case by law can be an open course on the rule of law for the public. It may give the public hope and optimism about the rule of law in our society. It can also result in disappointment undermining the rule of law. Therefore, the rule of law should be applied strictly in all cases of a public nature, whether criminal or civil.

On May 7, 2016, it was sunny without smog in Beijing. At about 21:00, Lei Yang, a 29-year old man and father of a 15-day-old daughter, was playing computer games. His wife reminded him that he should go the Capital Airport to pick up his mother, who was due to arrive at 23:00 along with two other relatives. Lei hurried on his way to the airport by subway and the airport express.

However, having arrived at the airport, Lei's mother could not make contact with her son. She called Lei's home. Lei wife called him repeatedly, but his mobile phone was powered off. His anxious family were at a loss.

At 01:00 the next day, Lei's family received a call from the Dongxiao-kou Police Station of Changping District. Half an hour later, the family arrived at the police station, where they were informed that Lei had been detained on suspicion of consorting with a prostitute, and he had died of a heart attack on the way to the police station.

The case attracted media attention and aroused widespread public

concern.

Reports on the case were broadcast by multiple media including Beijing TV and China Central Television. The police claimed to have DNA evidence of Lei's conduct, collected from the semen extracted from a condom left at the scene of prostitution. Meanwhile, the alleged prostitute claimed that she had simply helped Lei masturbate into a condom without having sex with him.

Netizens questioned the claims. TV reports also suggested that Lei had had no more than five minutes to complete the act, since the camera footage of his entry and exit from the alleged location lasted 12 minutes, including 6 minutes' walk. That also raised questions from netizens.

Further media reports resulted in greater public opinions skepticism. The police indicated that with the permission from Lei's family, a third party would be entrusted to conduct an autopsy under the supervision of the procuratorial authority to determine the cause of his death.

The autopsy began on the afternoon of May 13, 2016. Professor Zhang of the Chinese People's Public Security University was entrusted by Lei's family and approved by the procuratorate as an expert witness. The first phase of the autopsy, involving anatomical and pathological tests, took 13 hours to complete at 10:00 on May 14.

At 11:53 on May 19, the Beijing Municipal Public Security Bureau issued a statement on its Weibo account, saying that the bureau was attaching great importance to the case, and that, immediately after the incident, it had directed the Changping Branch to notify the procuratorate promptly and to cooperate with an investigation. It undertook that the public security authorities would respect facts, abide by the law, and deal with the case resolutely in accordance with the law, not concealing any fault of anyone involved.

On June 1, the Changping District People's Procuratorate accomplished the initial inspection on the clues, suggesting an investigation.

The Beijing Municipal People's Procuratorate authorized its fourth branch to investigate.

On the same day, the branch decided to investigate five members of the Dongxiaokou Police Station, including Xing, a police officer. The procuratorate informed Lei's wife of the progress they have made on the investigation.

On June 8, the procuratorial authority had separate meetings with the police officers under investigation and the lawyers entrusted by Lei's family, informing them of the progress of the investigation, soliciting opinions and suggestions from the lawyers, and collecting more evidence.

On June 27, forensic pathologists from across the country reviewed and discussed the findings on Lei's corpse. The procuratorial authority organized an expert review on the findings to date, which confirmed that the death of Lei had been caused by suffocation resulting from gastric contents in the respiratory passage.

On June 30, 2016, the procuratorial authority informed the families of the police officers under investigation, Lei's family and the lawyers entrusted by both sides of the findings. It also committed to continue with the investigation to clarify the facts and evidence as the basis for a conclusion.

Soon after that, the procuratorate decided to arrest Xing, deputy chief of Dongxiaokou Police Station, and Zhou, an auxiliary police officer, on suspicion of the crime of dereliction of duty, which shows that the procuratorate would investigate the improper actions or crimes in law enforcement.

On December 23, the Beijing Municipal People's Procuratorate issued this press release:

"The procuratorial authority confirmed that the conduct of Xing and his assistants involved in the case conforms to the crime of dereliction of duty. The procuratorate has had a comprehensive analysis of the

case and found that their offence was not serious. According to law, the procuratorate has decided not to proceed with prosecution.

According to findings by the Fengtai District People's Procuratorate, "On the evening of May 7, Xing, deputy chief of Dongxiaokou Police Station, along with Zhou, an auxiliary police officer, and Sun, Zhang, two security guards, were on duty in plain clothes near a pedicure and health care shop involved in prostitution in Changping District. At around 21:00, Lei was suspected of having received paid sexual services in the premises under surveillance. Xing and his assistants ran after Lei and tried to question him with their police identity. When Lei was trying to run away, they headed him off and threw him down by the waist. In attempting to bring Lei under control, Xing and his assistants put their arms around his neck, pressed on his face with their knees, held his arms and legs tight, and slapped his face. Subsequently, Xing directed his assistants to escort Lei to the police station by car against regulations [a regular police officer, in this case, Xing himself, should be doing this]. At a corner on the west side of a T-junction, Lei yelled and tried to jump out of the car. Xing's assistants once again subdued Lei and took him back under control. They restrained him with handcuffs and showed their police identity again to Lei. During that period, Xing's assistants stepped on his neck and face and dragged him forcibly back into the car, causing consecutive changes in his body position. Subsequently, Lei's body became limp and unresponsive. Being aware of his condition, Xing's assistants did not perform prompt first aid, nor did they make an emergency call, nor take him to hospital for treatment. When Lei was eventually taken to the hospital, he showed no signs of life and was declared dead at 22:55. According to the findings of the judicial appraisal agency, Lei died of suffocation caused by inhalation of gastric contents into the respiratory passage. Factors such as the victim's full stomach, the use of external force, the intensity of law enforcement, and the changes in the victim's

body position, cannot be excluded as causes of the asphyxia in this case.

After the incident, Xing made false statements in an interview with the media which aroused public doubt. He also deliberately fabricated facts, concealed the truth, and impeded investigations along with his four assistants.”

The Fengtai District People’s Procuratorate explained its decision not to proceed with prosecution this way:

“During the execution of official duties, Xing and his assistants failed to perform their duties correctly. They conducted improper law enforcement actions which exceeded the reasonable limit, causing the inhaled asphyxia of the suspect. They failed to perform their duties after discovering the abnormal condition of Lei’s body. They neither provided timely first aid, nor made an emergency call, nor sent the suspect to hospital for treatment, resulting in his death. In addition, they deliberately fabricated facts, concealed the truth, and hindered the subsequent investigation, which violated the provisions of Article 379.1 of the Criminal Law of the PRC, in conformity with the conditions defined as dereliction of duty. Since Xing and his assistants were enforcing the law in accordance with the instructions from their superiors, there was factual basis and legal premise for their law enforcement action. Lei’s actions impeded law enforcement. The offence of Xing and his assistants was not serious, for which they were repentant.

In view of all the facts and circumstances of the case and as per the provisions of Article 37 of the Criminal Law of the PRC, there is no need to impose criminal penalties on them. As per the provisions of Article 173.2 of the Criminal Procedure Law of the PRC, the procuratorate has decided not to proceed with prosecution. At the same time, the procuratorate has notified the discipline inspection authorities about the misconduct of the Party members involved in the case. It has also sent an official letter to the public security authority, and transferred the rele-

vant materials. It is recommended that the discipline inspection and supervision authority and public security authority impose serious penalties on Xing and his assistants, together with other individuals responsible, in accordance with the relevant rules and regulations.”

On December 29, after the procuratorate has decided to close its criminal investigation and not to prosecute Xing and his assistants, the Beijing Municipal Public Security Bureau and the CPC Commission for Discipline Inspection of Changping District announced their decisions: Xing, deputy chief of the Dongxiaokou Police Station was expelled from the Party and dismissed from public office. Kong, another police officer involved, was dismissed from the post of law enforcement. The auxiliary police officer and security guards had their labor contracts terminated in accordance with relevant management regulations.

The case of Lei Yang was finally concluded, although it did not reach the stage of judicial trial. The decision of non-prosecution by the procuratorial authority left a trace of regret. The case has caused profound and long-lasting wounds to the Chinese society. I hope that the society can heal its wounds as soon as possible, and that the people’s hopes for the rule of law will not be dimmed.

Chapter 62. Civil Code on the Horizon

A civil code is a set of laws directly related to the personal rights and property rights of individuals. According to the definition in dictionaries, personal rights mainly include personality right, identity right, right of personal liberty, right of life and health, and right of personal dignity. The right of personal dignity includes image rights, reputation rights, right of honor, right of name and right of privacy. It is obvious that the human rights status of a country is closely related to the formulation and implementation of a civil code. The most important political code of a country can be the constitutional code, while the most important social code has to be its civil code.

More than 110 countries around the world have adopted a civil code. Almost all the countries with written laws have a civil code.

Technically, the world's first civil code was the French Civil Code with over 2,280 provisions, published on March 21, 1804. The code was also called the Napoleonic Code, since it had been established under Napoleon. He also won a great reputation for the code in return. As the story goes, Napoleon once said proudly, "My glory is not in winning 40 battles, because the Battle of Waterloo has eclipsed these victories, but my civil code will not be forgotten. It will last forever."

After the Napoleonic Code was published in 1804, many other countries started to formulate their own civil code, with some adopting the Napoleonic Code directly. Among major countries under the civil law system, Japan referenced the French Civil Code when formulating its first and second civil codes in 1890 and 1898. Germany formulated its own civil code in 1986.

In China, the Qing Dynasty decided to formulate its own civil code

in 1907. Shen Jiaben, the Secretary of Enactment, was in full charge of the work (details in Chapter 4). The draft was finished under his guidance in early 1911. However, history exerted its mischief on the Qing Civil Code – the Qing Dynasty was overthrown just before the draft was deliberated and enacted. This draft was shelved forever, to the sorrow of later generations.

The Republic of China initiated the drafting of a civil code in 1929. The work was believed to be finished in 1931 by a group of five eminent Chinese scholars including Shi Shangkuan, along with Wang Chonghui as the consultant. The Civil Code implemented in Taiwan today is exactly that original and important text. Over eight decades later, the code is still playing its role as an important pillar for the Six Codes in Taiwan.

After the founding of the People's Republic of China in 1949, a civil code gradually made its way into its agenda. The drafting of a civil code was initiated in 1954 under the leadership of Wang Ming, member of the CPC Central Committee and director of the Commission of Legislative Affairs of the Central People's Government, who later went to the Soviet Union for good. By the summer and autumn of 1956, the drafting was suspended in the Anti-Rightist Campaign. In 1962, the work restarted before another suspension in the Cultural Revolution.

After the Third Plenary Session of the 11th CPC Central Committee in 1978, China once again started the work on a civil code. The National People's Congress worked out four draft civil laws, but none of them were adopted due to various constraints. Therefore, the National People's Congress dropped the previous expectation of producing a civil code in a single effort, and decided to formulate separate laws before integrating them into a complete civil code. Priority was given to separate laws in areas where there was an urgent need and the legal nexus was mature. The Contract Law was thus the first to be formulated. After that, work on the civil code was carried out intermittently with successes and setbacks.

In 2014, the Fourth Plenary Session of the 18th CPC Central Committee adopted the Resolution of the CPC Central Committee on Certain Major Issues Concerning Comprehensively Advancing the Law-Based Governance of China, with specific requirements for a civil code. The work was officially restarted. In the spring of 2015, the Legislative Affairs Commission under the NPC Standing Committee organized a seminar to solicit ideas from experts. According to the experts, the civil code should consist of seven chapters – General Provisions, Property Law, Contract Law, Tort Liability Law, Marriage and Family Law, Inheritance Law, and Law of Application of Foreign Civil Relations. Some scholars believed that the civil code should also include a chapter on the Law of Personality Rights. The codification is expected to be accomplished as scheduled in 2020. In March 2017, the General Provision of Civil Law was adopted and published. When the work on the other chapters is completed and integrated, a complete civil code of the PRC will be unveiled to the world.

Although there is still a long way to go to the full implementation of a civil code, we will have good reasons to breathe a sigh of relief when the work on the civil code is completed, because this will mark the realization of a long-lasting dream of the PRC.

Chapter 63. Reform of the Judicial Appointment System

“I pledge my allegiance to the Constitution of the People’s Republic of China to safeguard the Constitution, fulfill my legal obligations, be loyal to the country and the people, be committed and honest in my duty, accept the people’s supervision and work for a great modern socialist country that is prosperous, strong, democratic, culturally advanced, harmonious, and beautiful!”

On the early morning of July 3, 2017, an oath-taking ceremony was taking place in a meeting hall of the Supreme People’s Court, presided over by Justice Shen Deyong. After the solemn national anthem, Chief Justice Zhou Qiang, president of the Supreme People’s Court, with his left hand on the Constitution and the right hand clenched up high, led 366 judges of the whole court to make a pledge facing the national flag. The sacred pledge was heard in the Supreme People’s Court and across the land of China.

The pledge by incoming judges of the Supreme People’s Court marked a major step in the reform of the judicial appointment system (the selection and appointment of judges with quota restrictions). To the expectation of the jurisprudential and legal circles, reform of the judicial organs began to materialize. This reform marked a new milestone and opened a new historical chapter for China’s judicial trials, impressing the people with change and more expectations.

The reform of judicial appointment system is closely related to the grand goal of building a socialist country under the rule of law. The 15th CPC National Congress in 1997 confirmed law-based governance as the strategy of governing the country and building a socialist country under

the rule of law as the goal of development. The National People's Congress in 1999 confirmed the strategy and the goal in the form of a constitutional amendment. Meanwhile, the congress confirmed law-based governance as the principle of the rule of law.

However, law-based governance and building a socialist country under the rule of law are not empty principles. The confirmation of the ruling party and the establishment of the Constitution are not the end but a beginning. It must be guaranteed by an organization and implemented on the basis of a series of systems and mechanisms. A specific manifestation of law-based governance is to ensure judicial independence by law so that the people can enjoy fairness and justice in every judicial case. Judicature is the final guarantee of social justice. Ensuring judicial justice is the highest pursuit and direct goal of judicature and judicial reform. All the individual cases are heard by individual judges, whose qualities and capabilities are directly related to the judgment and social justice. Therefore, the reform of the judicial appointment system naturally got started with the selection and appointment of judges. While the reform was kicked off in all the courts around the country, it also got started in the Supreme People's Court. The outcomes have been satisfactory and inspiring.

The reform of the judicial appointment system has to do with the main body of judicial teams. Judicial trial is the basic function of courts. Judges are professionals undertaking judicial trials as the main body of judicial teams. The reform has to do with the building of the judiciary teams of courts. The number of qualified judges is the clearest reflection of the quality of judiciary teams. The essence of the reform is to improve the selection and appointment of judges. The quota for incoming judges and the requirement for their quality set the bar high for the building of qualified judiciary teams, which will ensure long-term and sustainable development. At the same time, this reform is also related to

the vital interests of the existing judges, as it affects to a greater or lesser extent their salary, career path, and social appraisal. Its effects are both psychological and practical, both personal and social. Therefore, the difficulty of promoting this reform is apparent. It has been a test for every judge, for every staff member of the courts, and for the leadership of the Supreme People's Court. It's not difficult to imagine the efforts made by the courts at all levels, including the Supreme People's Court. Their efforts paid off. We should applaud the Supreme People's Court, the incoming judges and all the staff members who have contributed to the reform.

The reform of the judicial appointment system is a key link in the renewal of the judicial mechanism which is extremely important to the judicial system. The judicial problems that have existed over a long period of time are, to a large extent, issues of judicial mechanisms. The renewal of the judicial mechanism is an important purpose of judicial system reform. The judicial mechanism is the objective basis of judicial operation and the institutional guarantee for its sound operation. The reform of the judicial appointment system is directly related to the question of who is accepted and who is not, to be more exact, the reform and reconstruction of the judicial mechanism. Judges are the ones who exercise judicial power by making judgment over cases. They are the most dominant subject and the core element of the judicial mechanism. The quality of judges has a direct impact on the efficiency of the judicial mechanism and consequently the effect of judicature. The renewal of the judicial mechanism must start from the selection and appointment of judges, which is the necessary requirement and the primary link for the renewal of the judicial mechanism. The core of China's judicial reform since the 18th CPC National Congress has been the implementation of the judicial responsibility system. The basic requirement is that the one who hears the case takes charge of judgment, and that the one who makes the

judgment takes responsibility. The reform of the judicial appointment system meets the requirement for establishing and improving the judicial responsibility system.

The reform of the judicial appointment system is related to the future of the judicial responsibility system. Establishing the judicial responsibility system is the core task of this round of judicial reform. According to the system, judicial responsibility is borne by the judge, including the responsibility for misjudged cases. The selection of unqualified judges will be tragic and harmful to the system and the society, since they will be unable to take due judicial responsibilities, while qualified judges will be able to do so. The reform of the judicial appointment system tries to solve the key problems of quantity and quality in the selection and appointment of judges. Therefore, the reform meets the requirement for the implementation of the judicial responsibility system.

The reform of the judicial appointment system is related to the realization of judicial justice. The importance of justice can never be overemphasized because judicial justice is the guarantee of social justice. All types of justice can be affirmed through judiciary, and all types of injustice can be corrected through judiciary. The entire judiciary has been carried out in accordance with justice at all times around the world. The most powerful and effective measures should be taken to promote the reform of judicial system and strengthen judicial justice. The essence of judicature is hearing cases and making judgments, which must be undertaken by judges. Reforming the judiciary system is bound to produce unique values. The selection and appointment of judges is fundamental in the reform, which will surely exert positive effects on judicial justice.

The reform of the judicial appointment system is an important part of judicial reform. Judicial justice ultimately depends on the judges who can fulfill their duties and live up to the expectations of the people. The Supreme People's Court and all the courts at different levels should be

commended for their significant achievements in judicial reform, especially in the reform of the judicial appointment system. The incoming judges of this new era should assume their duties as the defender, practitioner and promoter of fairness and justice.

Chapter 64. New Path for the New Era

China has seen successes and setbacks on its path towards the rule of law. The way forward is as twisted as the path of the Yellow River. But the Chinese nation is determined to make its way towards the future.

On December 29, 2012, Xi Jinping visited an exhibition titled “Road of Rejuvenation” soon after he had assumed office as the general secretary of the CPC Central Committee. In his impromptu speech, he quoted Tang Dynasty poet Li Bai: “Someday, with my sail piercing the clouds, I will mount the wind, break the waves, and traverse the vast, rolling sea,” as an inspiration for all the other visitors and the whole nation.

In the golden autumn season of 2017, domestic and international attention was focused on Beijing. On October 18-24, the 19th CPC National Congress took place in Beijing, marking another important point in Chinese history. At this congress, Xi Jinping was re-elected as general secretary of the CPC Central Committee and chairman of the Central Military Commission. The Political Bureau of the CPC Central Committee and its Standing Committee were elected. The congress solemnly declared that we have entered a new era of socialism with Chinese characteristics and defined Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era as the guiding ideology for national and social development.

When the New Year’s bell rang in 2018, the rule of law in China took a new step forward. On January 18-19, the Second Plenary Session of the 19th CPC Central Committee was held in Beijing. General Secretary Xi Jinping delivered an important speech. The plenary session reviewed and approved the proposal of the CPC Central Committee concerning the amendment to several provisions of the Constitution. In accordance

with this proposal, the existing 1982 Constitution would be revised to the largest extent since its enactment.

The Third Plenary Session of the 19th CPC Central Committee was held in Beijing on February 26-28. This session reviewed and adopted the decision of the CPC Central Committee on deepening reform of the Party and state institutions and an action plan. The session agreed to submit part of the action plan to the First Plenary Session of the 13th National People’s Congress for deliberation in accordance with legal procedures.

On March 5, 2018, the First Session of the 13th National People’s Congress opened in Beijing. The agenda included a review of Report on the Work of the Government; a review of the implementation of the 2017 Plans for National Economic and Social Development and Report on the 2018 Draft Plan for National Economic and Social Development; a review of the implementation of the 2017 central and local budgets and the report on the draft of 2018 central and local budgets; a discussion on the motion from the Standing Committee of the National People’s Congress on the review of the Amendment to the Constitution of the PRC (Draft) and Amendment to the Administrative Supervision Law of the People’s Republic of China (Draft); a review of the report on the work of the Standing Committee of the National People’s Congress, the Supreme People’s Court and the Supreme People’s Procuratorate; and the election and confirmation of members of state institutions.

The plenary session elected Xi Jinping as the president and chairman of the Central Military Commission for the new term. A new government with Li Keqiang as the premier was set up. A brand-new National Supervisory Commission was established. State leaders for the new term were elected and appointed. The plenary session deliberated on some contents of the Amendment to the Constitution of the PRC (Draft), the Amendment to the Administrative Supervision Law of the People’s

Republic of China (Draft) and the action plan for deepening reform of the Party and state institutions, and made some decisions, which will be a significant step in the history of the rule of law in China.

History sometimes seems to move so slowly that we may run out of patience, but it can also proceed so rapidly that we get overwhelmed. The rule of law to China is a long process. The rule of law of socialism with Chinese characteristics, pioneered by the CPC, will surely advance in the right direction. Chinese characteristics, determined by China's economy, politics, history and culture, will affect the development of the rule of law and promote a rule of law compatible with China's national conditions.

Conclusion: A Long Way to Go

It took a long time to write this book. I never expected that a general book on the rule of law would take so much effort, with the final version just passable. However long the writing process is, it is only a negligible instant compared with the process of the rule of law in China. China has traveled a long path in developing the rule of law, with many significant events and lively experiences. The book has described the tip of the iceberg, and it represents my attempt and desire to help readers see only a small fraction of the whole.

A large number of materials have been quoted, and they were both key sources and significant references in my writing. Since the book is not an academic work, not all reference sources have been given, and it is even harder to give reference sources for network materials. Here I would like to extend my most sincere respect and gratitude to the authors and media who own these materials. Thank you for your contributions and assistance.

In contrast to the style of textbooks or theoretical works, this book attempts to describe the progress of the rule of law in China with vivid examples. Each case and historical event was selected carefully, for I believe any abstract description is dull, while reality is always rich and colorful. It is inevitable that people may have different interpretations of the same case or historical facts. Multiple interpretations simply reflect

diversity. I hope readers will perceive the development of the rule of law in China from their own perspective and gain their own lessons from this book.

Many of the cases and examples in this book can only be described generally. There might be bias caused by incomplete information or misrepresentation, which I have tried to avoid. I would like to apologize in particular to relevant parties and those who know about it. At the same time, readers are also reminded that this work is by no means a legal instrument, factual recognition or news report. Descriptions in this book are story-based and artistic, so as to reveal the context of how the rule of law has developed, and enhance the book's readability. The rights and wrongs of the cases and examples involved are not the central point. Rather, the historical logic they contain is an important clue to understanding the rule of law in China.

The rule of law in China represents hundreds of years of struggle. It is like the flow of a big river, sometimes rushing through high mountains and valleys, and sometimes drifting across plains and grasslands. Sometimes it surges forward; sometimes it meanders. From the ancient times to the present, it has encountered numerous setbacks and obstacles like mountains impeding its progress, but fortunately it has always found a way through. Of course, there is still a long way to go, and more twists and turns await. Nevertheless, I am confident that the rule of law in China will move forward in the right direction.

The rule of law in China reminds people of the painful lessons that the Chinese nation has learned, the great sacrifices it has made, and the high price it has paid. Overwhelming suffering has been engraved on our soul, and we should not forget it but keep it firmly in mind. However, for various reasons, people are prone to forget past pains and recommit the same mistakes, which is something that should always be avoided in a rational nation. The way to completely avoid these sufferings is not to con-

stantly reinforce bad memories, but to open the path of universal peace through democracy and the rule of law, and to realize these two goals. Without the coexistence of democracy and the rule of law, the threat of autocracy and concentration of power will always lurk in the background, against which simple memory of pain is useless. It is difficult to fully record or display these pains in this book, and only a very few of them have been described. I simply hope that these can serve as an instruction to guide the followers to explore the historical path and protect the Chinese nation from the same sufferings in the future.

The rule of law to China requires unremitting efforts. We cannot wait for it to happen by itself, especially in a country where the rule of law is built in a constructive way. It requires the struggle of generations of intellects in long-distance relay and requires collective work from generation to generation. It has a starting point but no end. China must move forward with determination because hard work can bring hope while giving up can only produce disappointment and despair. The rule of law requires the efforts of a large number of brave people who have the determination and courage to create a better future for next generations.

The rule of law to China requires a group of truly great political leaders. They should be heroic, wise, brave, and ambitious, and dare to act with no fear. They should have broad minds and the spirit of self-sacrifice. They should be able to create the rule of law and abide by it at the same time. They represent the people and are also subject to the people. They should have great political ambitions like those preeminent political leaders in the world. Through overall reform of institutions, systems and mechanisms, and by upgrading the established social system, they should strive to serve the country and the nation by eliminating poverty and internal conflicts, protecting human rights, carrying out democracy, and establishing the rule of law. In this way we can build a

prosperous nation, maintain social tranquility, and promote happiness, so as to establish a brand-new social system based on the best of human civilization.

Making progress in the rule of law requires democracy. In the future, we need to rely both on the rule of law and on democracy. The rule of law is valuable; democracy is even more valuable, and democracy guaranteed by the rule of law is of the utmost value. Only by organically combining the two with democracy as the base can we say that the rule of law in China is delivering the expected results. That is because only the rule of law based on democracy can protect the Chinese nation from the pain of internal conflicts and disputes, so that people can truly enjoy a life in the bright light of peace, tranquility, happiness, and beauty. In such conditions, the efforts and sacrifice of previous generations will have been worth the price.

The rule of law to China must be based on a market economy, political democracy, social diversity and a rational culture. The rule of law is an overall reflection of national and social conditions, so it depends on a holistic external reality and a realistic foundation. If people's rights cannot be guaranteed, we will ultimately incline towards the rule of man or even autocracy. The rule of law in China has to advance on the basis of the current sound foundations.

We eagerly anticipate that China will establish a modern market economy and become an advanced market economy under the leadership of the Communist Party of China. China can establish the broadest, the most practical, and the most efficient rule of law in favor of the fundamental interests of the people, reflecting people's will, guaranteeing people's rights, and stimulating people's creativity, so as to ensure the rights of the people through institutions and systems.

We eagerly anticipate that with a market economy as the driving force and democracy as the guarantee, China can strengthen the rule of

law in an all-round way. The Chinese nation had initiated the process of the rule of law at the turn of the 20th century. We hope that the basic building blocks of the rule of law will be in place by 2035, that the full structure will be ready by 2050, and that optimal rule of law will be achieved by 2100.

The rule of law in China has made progress amid twists and turns, but it is sure to lead us ultimately to success.

Zhuo Zeyuan
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