

On the Progress of Rule of Law in China's 40 Years of Reform and Opening up

Liu Yigong

Department of Law, Faculty of Humanities and Social Sciences, Dalian University of Technology, Dalian 116024, China

Abstract: Since the reform and opening up in 1978, China has made remarkable achievements in the construction of the rule of law. This paper will mainly discuss the progress of rule of law in China's 40 years of reform and opening up. The paper can be divided into three parts. At first, the paper describes the historical background of China's reform and opening up as well as the legal situation before the reform and opening up. And then, the paper analyses the changes of rule of law in China since the reform and opening up to outside world through three periods: (1) The period of legal restoration and reconstruction (1978-1997); (2) The period of great development of the rule of law (1997-2012); and (3) The period of full-scale rule of law (2012-present). Finally, The paper summarizes the basic experience of the construction of the rule of law since China's reform and opening up from four aspects. It includes: (1) The transformation from the law of planned economy to the law of market economy; (2) The transformation from rule of man to rule of law; (3) The establishment of legal system with Chinese characteristics; and (4) In the development of the rule of law, China not only inherited the traditional Chinese legal civilization, but also absorbed the outstanding achievements of rule of law in the world.

Key words: Rule of Law, China, Reform and Opening up

I. China's legal tradition and its modernization

Before the Western powers came to China, China was a unified empire with thousands of years of civilization. China has a vast territory, diverse geographical environments, numerous ethnic groups, and different customs and habits. In terms of the legal system, China has a long-standing legal civilization and has formed a unique legal tradition. Historically, China's legal system was highly developed. As a representative of the Chinese legal system, Tang Law has had a profound impact on the legal system of neighboring countries.

In 1840, the Opium War broke out, Western powers opened China's door with guns, forcing China to embark on the path of modernization of the legal system. However, due to the strong conservative forces within the Qing Dynasty, the legal reforms were difficult. At the beginning of the Opium War, the Qing government did not realize that it was necessary to change the state system. They only wanted to develop economy to enrich the country and fight against the West.¹

¹ Xu Lizhi, "Comparative Study on Modernization of Chinese and Japanese Legal Systems", Foreign Law Translation Review, 2000, No.1.

The reformists in the late Qing Dynasty proposed to follow the British constitutional monarchy, promote constitutionalism in China, implement political system reform, and learn from the Western legal system experience to transform the traditional Chinese legal system. Therefore, in late Qing Dynasty, under the auspices of Shen Jiaben, the Qing Dynasty began to translate a large number of Western laws and regulations, and took the Western legal system as a blueprint to transform the traditional Chinese legal system. At the end of the Qing Dynasty, the Qing government formulated and revised a series of modern codes and transformed the traditional Chinese legal system into the civil law system. Under the impetus of Shen Jiaben, the Qing Dynasty carried out a series of political reforms, such as abolishing the imperial examinations, developing political parties, establishing Parliament, and preparing constitutionalism. However, with the outbreak of the Revolution of 1911, this process was interrupted, and a series of modern codes formulated in the late Qing Dynasty were not promulgated and implemented. After the overthrow of Manchu in 1911, China established the first Republic of Asia, the Republic of China, and China's legal system continued to develop on the basis of the reform of the legal system in the late Qing Dynasty.

After the Opium War in 1840, the Chinese legal system began to move toward modernization. Under the impact of the Western system, the Chinese legal system was disintegrated in form. China followed the example of Germany and Japan to establish a modern legal system. In 1911, the Republic of China was established. During the period of the Nanjing Provisional Government, Sun Yat-sen advocated the rule of law of the Western bourgeoisie on the basis of the Three People's Principles and put forward the "constitution of five powers" in light of China's national conditions. During the Beiyang government, on the basis of the legal reform in the late Qing Dynasty, China established its own civil and judicial system in the same way as the West. However, due to the war of warlords at the time, the country was extremely unstable, so most of these laws are formal and have little practical effect. During the period of the Nanjing National Government, China continued to improve its legislation and perfected the six-law system of the civil law system.

In 1949, Chiang Kai-shek's regime retreated to Taiwan, and the People's Republic of China was established. In the 1950s, China abolished the Six-Law Book of the Kuomintang period and comprehensively studied the laws of Soviet Union. After the October Revolution in Russia, the political theory and legal system of the Soviet Union began to be introduced to China. As early as the early 1930s, during the first domestic revolutionary war, the legal system of the Chinese Soviet region was mostly patterned after the Soviet law. In the early 1950s, China fully borrowed the Soviet legal system. For example, the 1954 Constitution of China was based on the 1936 Constitution of the Soviet Union. In addition, other laws, legal theories, and legal education other than the Constitution are also fully influenced by Soviet law. With the establishment of China's legal system, China and the Soviet Union, Eastern Europe and other socialist countries together constitute the socialist legal system. The influence of Soviet law on China's legal system is so far-reaching that "there is no country in the world that has reached such a wide and profound level in studying and learning from foreign law."² during the decade of the Cultural Revolution (1966-1976), China's legal system experienced a serious retrogression. The emergence of

² Cai Dingjian, "History and Change: The Course of Legal System Construction in New China", China University of Political Science and Law Press, 1999, p. 252.

political and legal nihilism has seriously hampered China's legal development. Through the reflection on the Cultural Revolution, China has started a new journey of reform and opening up.

II. The development of Rule of Law in China's 40 Years of Reform and Opening up

The Cultural Revolution ended in 1976. In 1978, the Third Plenary Session of the 11th CPC Central Committee was held. China began a new era of reform and opening up. Since the reform and opening up in 1978, China's legal system has undergone three major periods.

(1) The period of legal restoration and reconstruction (1978-1997)

At the time of the Third Plenary Session of the Eleventh Central Committee of the Communist Party of China, although the "Cultural Revolution" was formally over, the national law was almost blank. Therefore, it is imperative to enact a batch of laws to quickly restore the legal order and the social order.³

Since 1979, the National People's Republic of China has successively passed the Criminal Law of the People's Republic of China, the General Principles of the Civil Law of the People's Republic of China, the Criminal Procedure Law of the People's Republic of China, the Administrative Litigation Law of the People's Republic of China, and the local Organic Law of the People's Congress and Local People's Governments, "The National People's Congress of the People's Republic of China and the Local People's Congress Election Law", "Organization Law of the People's Court of the People's Republic of China", "Organization Law of the People's Procuratorate of the People's Republic of China" The "Sino-foreign Joint Venture Enterprise Law of the People's Republic of China" and a large number of important laws, the socialist legal system with Chinese characteristics has begun to take shape.

The Constitution is the fundamental law of the country. In 1954, the First National People's Congress passed the Constitution of the People's Republic of China. However, due to various historical reasons, since the late 1950s, the role of this constitution has gradually weakened, so that it has been shelved and abandoned in the "Cultural Revolution." The loss of constitutional authority led to the decline of the democratic legal system. In 1980, the Central Committee of the Communist Party of China decided to completely amend the Constitution. After 29 months of hard work, on December 4, 1982, the Fifth Session of the Fifth National People's Congress passed the comprehensive revision of the Constitution of the People's Republic of China.

(2) The period of great development of the rule of law (1997-2012)

In 1997, the report of the 15th National Congress of the Communist Party of China clearly stated that "ruling the country according to law and building a socialist country ruled by law" as the basic strategy of the party leading the people to govern the country and the fundamental goal of political system reform, proposed to form a socialist legal system with Chinese characteristics by 2010. After more than ten years of development, on March 10, 2011, at the Fourth Session of the 11th National People's Congress, Wu Bangguo, then Chairman of the Standing Committee of the National People's Congress, solemnly announced in his work report on the work of the Standing Committee of the National People's Congress: A socialist legal system with Chinese characteristics, including laws and regulations at various levels, has been formed.

³ Zhang Wenxian, "The 40 Years of Rule of Law in China: History, Trajectory and Experience", Journal of Social Sciences, Jilin University, No. 5, 2018.

(3) New period of rule of law (2012-present)

Beginning with the 18th National Congress of the Communist Party of China, socialism with Chinese characteristics has entered a new era, and the rule of law in China has also entered a new era. In 2012, the report of the 18th National Congress of the Communist Party of China put forward: "Accelerating the construction of a socialist country ruled by law must comprehensively promote scientific legislation, strict law enforcement, fair justice, and the law-abiding process for all people." The new 16-character policy reflects the new layout of the rule of law and lays a theoretical and practical foundation for the formation of a comprehensive strategy for the rule of law.

In order to achieve the development goal of "rule of law China", the report of the 19th National Congress also depicts the grand blueprint for governing the country according to law, and points out the strategic arrangement for achieving the two stages of comprehensively promoting the overall goal of governing the country according to law: the first stage, from 2020 to 2035, Rule of Law Country, Rule of Law Government, Rule of Law Society was basically completed, the national governance system and the modernization of governance capacity were basically realized; the second stage, from 2035 to the middle of this century, realizing the modernization of national governance system and governance capacity.

III. Rule of law construction achievements in China's 40 years of reform and opening up

At first, China has successfully transformed from planned economy legal system to market economy legal system.

The ancient Chinese economy was dominated by the self-sufficient small-scale peasant economy and was a typical farming civilization. Since the 19th century, China's industrial and commercial economy has gradually established and developed. Since the 1950s, China has been implementing a planned economy under the influence of the Soviet Union.

Objectively speaking, the planned economy has made significant contributions to the recovery and development of China's economy and the welfare of the people. However, because the planned economy is a highly concentrated, low-efficiency social economic system in practice, which has various drawbacks and limitations. Therefore, since the reform and opening up, China has begun to shift from a planned economy to a socialist market economy. After decades of development, China has successfully realized the transition from a planned economy to a socialist market economy. With the improvement of the socialist market economy legal system with Chinese characteristics, the Chinese economy has maintained rapid development for many years and has now ranked second in the world.

Secondly, China has successfully realized the transformation from rule of man to rule of law.

China has more than 2,000 years feudal society. Feudal autocracy or long-term rule of man is the basic feature of China's political system. Since the reform and opening up, with the development of the socialist legal system with Chinese characteristics, China has successfully realized the transition from human governance to the rule of law. Deng Xiaoping, a designer of China's reform and opening up, pointed out that "in order to protect people's democracy, we must strengthen the rule of law. "

The concept of the rule of law was first proposed by the Greek thinker Aristotle. Aristotle

clearly stated in his famous book "Politics": "We should note that although the state has good laws, if the people cannot follow them all, the rule of law still cannot be achieved. The rule of law should have two meanings: the established law is universally obeyed, and the law that everyone obeys should itself be a well-developed law." This statement became a classic exposition of the "rule of law". The "Rule of Law" in the modern sense refers to the social management mechanism, the social activity mode and the social order state with democracy as the premise and goal, strict behavior according to law, and power restriction.

President Xi Jinping pointed out: "Any organization or individual must act within the scope of the Constitution and the law. Any citizen, social organization or state agency must adopt the Constitution and laws as the code of conduct, exercise rights or powers in accordance with the Constitution and laws, perform obligations or Responsibility." On June 24, 2015, the fifteenth meeting of the Standing Committee of the 12th National People's Congress passed a decision on the implementation of the constitutional oath system. It was implemented on January 1, 2016 and officially established the constitution oath system of our country in the form of legislation. The establishment of the constitutional oath system in the constitution is conducive to stimulating the state staff to establish a constitutional awareness, abide by the constitutional principles, carry forward the constitutional spirit, fulfill the constitutional mission, and also help to demonstrate the constitutional authority, encourage and educate the state staff to be loyal to the Constitution and to abide by the Constitution. Maintain the Constitution and strengthen the implementation of the Constitution.

Thirdly, China has established a socialist legal system with Chinese characteristics.

After more than 20 years of long-term exploration and practice, the socialist legal system with Chinese characteristics has finally been established. The establishment of a socialist legal system with Chinese characteristics is of paramount importance for China's continuing reform and opening up and the development of a market economy.

Fourthly, while inheriting the traditional Chinese legal civilization, pay attention to absorbing the outstanding achievements of the legal civilization in the world.

China has a long history of legal civilization and colorful legal culture. The historical Chinese legal system, as a model of East Asian civilization, has had a profound impact on China's neighboring countries and is an important part of the world's legal civilization. At least, there are three aspects of Chinese traditional legal culture can be inherited.

(1) Humanism. The Confucian concepts of law are humanistic. Confucius advocates "benevolence, righteousness, ritual, wisdom and trust" (仁义礼智信), in which "benevolence" (仁) is the core value.⁴ Mencius focused on "benevolent governance" (仁政) and "people-oriented" (民本). He pointed out that "for a country, people are more important than the state and the king". (民为贵，社稷次之，君为轻). Concerning economy, Mencius believed that "persons with immovable property are persons of perseverance" (有恒产者有恒心). It means that a person with a certain amount of property will tend to abide by morality while those extremely poor people will tend to break the law.

(2) Moral Enlightenment and Prudent Punishment (明德慎罚). Mencius once said, "Virtue alone is not sufficient for the exercise of government; laws alone cannot carry themselves into

⁴ "benevolence, righteousness, ritual, wisdom and trust (仁义礼智信)" are five pillars of Confucianism, they are basic values of traditional Chinese culture and ethics.

practice.” (徒善不足以为政，徒法不能以自行). Most ancient Chinese thinkers stressed the importance of moral education. However, Confucianism emphasizes on “moral enlightenment and prudent punishment”, a notion developed by Confucius in the Western Zhou Dynasty (16th century- 770 BC). Confucius thought that “moral enlightenment is primary while penalty is supplementary” (德主刑辅). For two thousand years, “ritual” (礼) and “punishment” (刑) had been the cores of the feudal law in feudal China. The law of imperial China is described as being a legalist in form and a predominantly Confucian in spirit.⁵

(3) Harmony thought. “Tao” (the way) is the core thinking of Lao Zi and refers to the origin and regulation of everything in the universe. Lao Zi once said, “Man models himself after Earth. Earth models itself after Heaven. Heaven models itself after Tao. Tao models itself after nature.” (人法地，地法天，天法道，道法自然)，

Another important Taoist concept is “the harmony between man and nature (天人合一)”. After industrialization, humans began to exploit nature in an unprecedented scale. The damage done to the environment is more serious than ever before, leading to depletion of resources and extinction of a large number of plants and animals. We are now facing serious environmental problems like soil erosion, desertification, water shortage, pollution and global warming. As human beings act against the law of nature, they are bound to be punished by nature in the end. Mankind is part of nature and we should live with nature in peace instead of conquering it.

While inheriting the traditional rule of law civilization, China also pays attention to absorbing and learning from the outstanding achievements of the rule of law civilization in the world. With China's reform and opening up and the revival of the legal system in the 1970s, the National People's Congress has enacted a series of written legislations and gradually formed a legal system of statute law with its own characteristics. At the same time, China has also strengthened its research on the legal systems of civil law countries and regions, including the French, German, Japanese and Taiwanese legal systems.

Since the reform and opening up, China has sent a large number of international students to study in the United Kingdom and the United States. Among them, there are many students who study law. After returning to China, these students will naturally bring the experience and legal ideas of the legal system construction of the Anglo-American legal system to China, this will be helpful for China's development of legal construction.

⁵ Geoffrey MacCormack, *The spirit of traditional Chinese Law*, The University of Georgia Press, 1996, p1.