

The History of the Compilation of the Civil Code and Its Basic Experience

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Abstract: *The promulgation of the Civil Code of the People's Republic of China has aroused widespread concern in Chinese society. The fundamental reason is that the Civil Code is a law for the benefit of the people. As President Xi Jinping has repeatedly emphasized on important occasions, the Civil Code is important for upholding and developing people-centered ideas. It is of great significance to protect the rights and interests of the people. The formulation of laws must adhere to scientific theoretical guidance, must draw experience and lessons from history, and must be based on practical issues. Therefore, from the perspective of the history of the compilation of the Civil Code interpret how the Civil Code came into being and how to embody the people-centered stance, so as to clarify why the Civil Code is a people-centered law and the law that truly protects the interests of the broad masses of people.*

Keywords: *Civil Code, people-centered, interest, socialism*

1. Introduction

After the founding of the People's Republic of China, the formation of the Civil Code can be traced back to the 1950s. After three drafts and one compilation, it was finally formulated and promulgated to the world. From the perspective of social influence, the current society's concern for the Civil Code has reached an unprecedented level. After the Civil Code was promulgated, the whole country conducted extensive and in-depth study and research on it, and a great discussion about the Civil Code was set off. This phenomenon arises not only because the Civil Code has a special epoch-making significance in the field of law, but more importantly, the Party Central Committee with Xi Jinping at the core is very concerned about the Civil Code. On the second day of the promulgation of the Civil Code, Xi Jinping immediately presided over the 25th Collective Study Session of the Political Bureau of the CPC Central Committee and delivered an important speech about the Civil Code. This raises the significance of the Civil Code from a legal level to a national overall level.

Xi Jinping pointed out: "The Civil Code should be included in the national education system." [1] The study and discussion of the Civil Code expanded from the law major to the whole society. The essence of the study and discussion of the whole society is the study and discussion of all the people. Marx pointed out that everything that people strive for is related to their interests [2]. Linking people's behavior with interests, starting from an economic perspective to investigate social phenomena, more scholars have further come to the conclusion that interests are the logical starting point of all people's behaviors [3]. From a fundamental point of view, it is precisely because the Civil Code is a law that truly reflects, conforms to, and solves the interests of the people, it will cause great repercussions among the people. The primary premise of the Civil Code in the hearts of the people is that the people are at the center of the Civil Code. This article will explain the origin of the Civil Code and the significance of the current the Civil Code from the perspective of the history of the compilation of the Civil Code. This has certain theoretical significance for enhancing the discourse power of socialist legal thoughts with Chinese characteristics in the world legal arena.

2. People-centered is the basic follow of the three drafting of the Chinese Civil Code

After the founding of the People's Republic of China, the construction of the rule of law in China has gone through a long and difficult tortuous course, but the class attribute of the law has undergone a fundamental change, and the guiding ideology of legislation has undergone a fundamental change. The Communist Party of China summarizes previous historical experience and conforms to the requirements

of the times. While rationally absorbing the advanced features of the previous Civil Code, it has always regarded "people" as the starting point, center, and purpose of the new Civil Code. Civil law, as a human law, began to truly pay attention to the interests of the broad masses of people.

Mao Zedong inherited and developed the Marxist view of law, emphasizing that the law "protects the interests of the working class", and the old laws that are not in line with the interests of the working class have been completely abolished with the breaking of the old state machinery. The "Common Program" promulgated on the eve of the founding of the People's Republic of China made it clear that both the old feudal ideas and the laws used by the reactionary government to exploit the people should be abolished. This is of great significance to the establishment of a new legal system. Mao Zedong emphasized that the hallmark of our political party is to obtain the closest connection with the broadest masses of the people, to serve the people and to proceed from the interests of the people. The work of establishing a new civil law is naturally carried out in accordance with the idea of "serving the people. China's first law is the "Marriage Law" that belongs to the category of civil law. It abolished the feudal marriage system and played an important role in safeguarding the rights of women and children. At that time, the two Civil Code drafting work failed due to the highly centralized planned economic system, the underdeveloped social economy, and the wrong ideological line of the party. But this also caused the Party Central Committee to attach importance to the Civil Code. The second drafting work was carried out in accordance with the instructions issued by Chairman Mao Zedong that "not only the criminal law, but also the civil law". In addition, China promulgated the first socialist constitution in 1954, rooting the theory of "serving the people" in the fundamental law, stipulating that all powers of the country belong to the people. It is "truly belong to the people and serve the people." The civil law must be formulated in accordance with the constitution which is the basic law. Therefore, the formulation of a "people-centered" Civil Code is only a matter of time.

Deng Xiaoping inherited Mao Zedong's thought and at the same time set out the party's ideological line. Deng Xiaoping regarded "common prosperity" representing the fundamental interests of the broad masses as one of the essence of socialism, thus breaking the view that the law is purely serving the class struggle in terms of the value of law. He believed that the law must first serve the material interests of the people. The "Three Favorable Standards" have been taken as the highest standards for legal formulation. He proposed: "In order to protect the people's democracy, the socialist legal system must be strengthened." [4] Corrected the previous useless theory of the rule of man rather than the rule of law, and believed that the protection of the people's interests must rely on the construction of democracy and the legal system. Deng Xiaoping's above-mentioned theories were also used in social and economic construction, promoted China's opening up and modernization, promoted economic development, and created certain social and economic conditions for the formulation of the Civil Code. In this context, the third draft of the Civil Code was launched in 1979, and the fourth draft of the Civil Code was finally formed in 1982. However, because the planned economy was still dominating at the time and thinking became cautious, and the draft still followed the Soviet model. If it officially becomes a Civil Code, it will have a negative impact on the development of the socialist market economy, and will not be conducive to the development and protection of the interests of the people. As a result, Xi Zhongxun, then director of the Legislative Affairs Commission, suspended the drafting of the Civil Code through a meeting after listening to various opinions. Since then, the work has shifted from directly enacting the Civil Code to enacting the separate civil law first, and then enacting the Civil Code when the time is right.

In summary, although the three drafting tasks in history all ended in failure, it can be seen that putting the people at the center has always been the basic follow of the CPC in the whole process of drafting the Civil Code. As the basic guarantee law of civil rights, the Civil Code must persist in seeking truth from facts and keep in mind the original intention and mission of serving the people.

3. The response of the current Civil Code to the new era

There is an old saying in China, the law should change in accordance with the changes of the times, so that society can be governed well; only if social governance is adapted to social reality can results be achieved. The Civil Code will inevitably change in accordance with the changes in all aspects of society in the new era. As Mr. Jin Ping said, "Only in this era can our own Civil Code be born." This part chooses three perspectives to analyze how the Civil Code responds to the new needs of the new era. Based on this, the Civil Code will also have a positive reaction to the new era and further protect the rights of the people.

3.1 The Civil Code reflects the new needs of economic development

The economic base determines the legal superstructure is the meta-proposition of Marxism. Marx pointed out that the law itself does not provide anything, but only recognizes the existing relationship [5]. It can be seen from the above that the decisive factor for the failure of the drafting is the economic foundation. The single public ownership economy determines that it is impossible to formulate the Civil Code that protects private rights. Xi Jinping pointed out that the Civil Code regulates the personal relationship and property relationship between natural persons, legal persons and other civil entities. This is the most common social and economic relationship in social and economic life which involves all aspects of economic and social life[1]. The Civil Code must be based on the socialist market economy in the new era and reflect the development requirements of the socialist market economy, in order to better exert the reactionary effect of the CivilCode on the market economy, promote economic development, and benefit the broad masses of the people.

The report of the 19th National Congress of the Communist Party of China pointed out that it is necessary to uphold and improve China's socialist basic economic system and distribution system, and achieve the two "unshakable". Article 206 of the Real Rights regards the socialist basic economic system as one of the basic principles of real rights, which is both an adherence to the previous principles of the "Property Law" and change based on the report of the 19th CPC National Congress. Innovation has a central position in the overall situation of China's modernization. "It is necessary to protect the legitimate rights and interests of entrepreneurs in accordance with the law, and strengthen the protection of property rights and intellectual property rights"[6]. The rule of law stimulates market innovation vitality. For this, the Civil Code adds general provisions on intellectual property rights, The purpose of entering into a technology contract also requires the protection of intellectual property rights, and the right to request punitive damages for infringements of intellectual property rights. With the development of the economy, houses have become one of the "three new pieces". Land and housing resources are gradually scarce. In order to realize the rational allocation of resources and the purpose of housing for special people, the Civil Code has set up the right of residence. "The rule of law is the best business environment". The inclusion of factoring contracts and property management service contracts into typical contracts in the Civil Code conforms to the development needs of the two major industries, and the rule of law reduces institutional transaction costs and contract disputes.

3.2 The Civil Code reflects the new needs of cultural development

At present, under the banner of the so-called "universal value", the West is increasingly discrediting China's excellent traditional culture, and cultural nihilism is growing. Xi Jinping emphasized: "Excellent traditional culture is the foundation of the inheritance and development of a country and a nation." [7] Chinese excellent traditional culture is the result of our inheritance after thousands of years of great waves and sand. It cannot be discarded under any circumstances. The relationship between law and culture is not limited to analyzing the difference between the two, but emphasizes the mutual connection between the two. The " Guiding Opinions on Further Integrating Core Socialist Values into Construction of the Rule of Law" pointed out that we must adhere to the benign interaction between the rule of law and the rule of virtue, and integrate the core socialist values into the law. The full integration of the core values of socialism in the Civil Code can not only promote the excellent Chinese traditional culture and enhance cultural confidence; it can also make the law easier to understand by the people, reduce the resistance of the Civil Code in its operation, and drive the society to abide by laws and regulations.

Articles 4 to 9 establish the six basic principles of the Civil Code, namely the principle of equality, the principle of free will, the principle of fairness, the principle of good faith, the principle of public order and good morals, and the principle of green. The core and soul of the Civil Code, consciously promote the core socialist values in the implementation of the Civil Code, and promote the all-round harmonious development of society. The basic principles of the Civil Code stipulate other general clauses, that is, other general clauses should also reflect the needs of socialist core values. For example, Article 184 stipulates that the perpetrator shall not bear civil liability for damage to the aided person due to the voluntary implementation of emergency rescue activities. Article 1217 stipulates that the driver shall be less liable for damage to the passenger caused by the good intentions of the same ride. It protects the behavior of helping others out of goodwill and helps promote good social customs of being willing to help others. Article 1043 positively affirms that marriage and family should abide by ethics, establish a good family tradition, husbands and wives have mutual loyalty obligations, and harmonious and mutual assistance within the family; Article 1042 negatively denies behaviors that undermine family virtues, such as domestic violence and interference with freedom of marriage and so on.

3.3 The Civil Code reflects the new needs of the development of people's rights

The concept of people's rights has gradually become clearer through continuous generation and evolution, but the connotations of people's rights in different times are also constantly generating new needs with the development of society, which requires the law to constantly adapt to the new situation and give people's rights more fully and effectively protect. Civil law is a law about people. Implementing the 19th CPC National Congress report on strengthening the protection of human rights and the rule of law and ensuring that the people enjoy broad rights and freedoms in accordance with the law is the right meaning in the Civil Code of the new era[8]. The Civil Code is known as the "Declaration of People's Rights in the New Era", precisely because all of its contents are developed around the central point of people's rights, and combined with the new era, it is constantly updated and improved to form a more complete people's rights protection system to ensure people's rights. Not be infringed by others, and promote human freedom and comprehensive development.

In terms of time, Article 13 stipulates that the natural civil rights capacity begins at birth and ends at death, indicating that natural persons can rely on the Civil Code throughout their lives to enjoy their legal rights and safeguard their own interests. For the time frame, the Civil Code also has certain extensional technical provisions. Article 16 establishes that the fetus has the capacity for civil rights under special circumstances and Article 994 protects the personal interests of the deceased during his/her lifetime. From the content point of view, while the Civil Code emphasizes the equal legal status of civil subjects, it also emphasizes that people in different backgrounds enjoy de facto equality in reality, such as the establishment of a temporary living care system in emergency situations. In terms of methods, it not only confirms and protects the rights of the people, but also requires public power to be inviolable. "The inability of leading cadres to use words to replace the law, and power to suppress the law is the enemy of the rule of law." [9] The Civil Code complies with the requirements of building a government under the rule of law, stipulating that public authorities must respect and protect the rights of the people. For example, public authorities should protect the privacy and information of natural persons, and public security authorities should promptly investigate the person in charge of falling objects from heights in accordance with the law.

4. Basic experience in the compilation of the Civil Code

4.1 Upholding the leadership of the Communist Party of China

Adhering to the overall leadership of the Communist Party of China is China's most important political feature, which also determines the characteristics of the rule of law in China. The leadership of the Communist Party of China is the choice of the people. The Communist Party of China has always placed the people in the central position of the construction of the rule of law and has been sincerely supported by the people. The leadership of the Communist Party of China is the choice of history. The bitter lessons of the Soviet Union and the experience of China's own rule of law construction show that the construction of the rule of law can't be separated from the leadership of the Party at any time, and the two are highly unified. Adhering to the leadership of the Communist Party of China is conducive to ensuring that the rule of law in our country serves the masses better and better, and is fundamentally different from the rule of law in which the bourgeoisie serves its own class. In the process of law-based governance, it is inevitable that the "hard problems" will be encountered, this time is an urgent need the CPC Central Committee to make the top-level design from the overall strategic perspective, overcome the resistance in the construction of the rule of law. Adhere to the leadership of the Communist Party of China is conducive to ensuring that the modernization of the rule of law is always unified in the overall situation of national development, so that the rule of law and other means of social governance play a common role, and and concentrate on achieving the goal of comprehensive rule of law.

4.2 Upholding focus on solving practical problems, highlight the Epochal characteristics of the law

The law of every period is a reflection and answer to the problems of the present era. Looking back at the century-old history of the compilation of the civil code, we can see that in every social revolution led by the Communist Party of China, the civil law paid attention to the major struggles engaged in by the state and took the current subject as its own task. During Mao Zedong's period, the Civil Code had a prominent class stand, highlighting the theory of people's democratic dictatorship, after the reform and opening up, the Communist Party of China placed economic construction at the core, and the Civil Code began to serve the construction of a socialist market economy with Chinese characteristics. Today, the

19th National Congress of the Communist Party of China has made important strategic arrangements for the modernization of state governance in the new era based on the inspection of the country's reality. The Civil Code fully escorts the country's phased goals and responds to major issues in all aspects of the real society. Obviously, our Party has a prominent sense of problems, adhere to the problem-oriented, and constantly innovates and develops the legal system, so that every law is marked with a profound brand of the times.

4.3 Maintain reasonable openness and jointly build the system of distinctively Chinese socialist rule of law

Although the western rule of law theory has limitations, the negation of the limitations does not mean the total negation of the Western rule of law theory. It is undeniable that the theory and practice of civil code and other laws in the West have a longer history than that of our country and have accumulated valuable wealth. The early experience of legal system construction in Soviet showed that it was difficult to promote the development of Soviet legal system by blindly opposing western systems. While adhering to its own path of socialism with Chinese characteristics, China should rationally examine Western legal theories and systems with a global perspective and an open voice, learn advanced experience from the West, and use it for my use. This is a mature the attitude of a country under the rule of law. However, we must always treat the western theory of rule of law dialectically, combine the achievements of the civilization of rule of law created by human beings with the excellent culture of rule of law of the Chinese nation, and always be vigilant against the invasion of Western ideology. Judging from this requirement, Marxism plays an extra important role in the modernization of the rule of law. Adhere to historical materialism and dialectical materialism, always based on China's own national conditions, serving the broad masses of the people as the goal, reasonably absorb the experience of the rule of law in the West, and jointly build the modernization of the rule of law in China.

5. Conclusions

Under the leadership of the Communist Party of China, we have always adhered to the spirit of people-centered legislation, and finally promulgated the Civil Code. In the future implementation of the Civil Code, we must fully absorb experience and lessons, give full play to the role of the Civil Code, and let it truly serve the broad masses of people. The society is constantly evolving, and the law is also evolving. But when the law is lagging, that is, when there are no provisions or unclear provisions in the law, legal workers must always stand in the position of the people and use the spirit of the rule of law. At the same time, summing up the basic experience in the compilation of the civil code is also conducive to China's future legislation.

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