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Looking Back and Thinking Forward: The Current Round of Civil Law Codification in China

SIYI LIN*

A civil code is a key feature of a civil law jurisdiction. But despite being a civil law jurisdiction, the People's Republic of China lacks a unified civil code. On March 15, 2017, China promulgated the General Provisions of Civil Law—the opening chapter of the Chinese Civil Code planned for enactment in 2020. Over the last hundred years or so, several attempts were made to introduce a civil code in China. The genesis of Chinese civil codes can be traced back to 1911 when the Draft Civil Code of the Great Qing Dynasty was written. After the Communist Party of China (CCP) came to power in 1949, the country initiated several rounds of codification to create a single comprehensive civil code, but none succeeded for various complicated reasons. Codifying a civil code is a titanic project that takes tremendous effort, time, and money. Although the forthcoming Chinese Civil Code has been put on the legislative agenda, the legislative process will not be smooth

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sailing. The purpose of this article is to summarize the past experiences to assist the current lawmakers in the enactment of the new Chinese Civil Code. This article adopts a historical approach to analyze the successes and failures of previous codification efforts. Furthermore, it draws on the past as a way to analyze the current wave of civil law codification. Finally, the article highlights the potential challenges legislators may face with respect to the drafting process.

I. Introduction

With regard to legal tradition, China has long belonged to the family of civil law relying on statutory codes as the sources of law.8 Since the establishment of the People’s Republic of China (“PRC” or “China”) in 1949, China has experimented with unified civil codes for decades and initiated four rounds of civil law codification, all of which have failed.9 Despite the recurring failures, China embarked on a new round of civil codification in 2014 after the CCP vowed to build a country with a “socialist rule of law” and proposed a plan to codify a Chinese civil code.10 On March 15, 2017, China promulgated the General Provisions of the Civil Law (“General Provisions”)I—the opening chapter of the Chinese Civil Code that is to be enacted in 2020, which represents a milestone in the process of civil law codification in China.2

Failure is more common than success for civil law codification projects.13 Although civil law codification has been put on the legislative agenda with the CCP’s full support, the codification is still a titanic, fraught, and often

10. The CCP made the call for civil law codification work in the “Decision of the CCP Central Committee on Some Major Issues Concerning Comprehensively Advancing the Rule of Law” (中共中央关于全面推进依法治国若干重大问题的决定), which was adopted on October 23, 2014, by the 4th Plenary Session of the 18th Central Committee of the CCP. An English translation is available at https://chinacopyrightandmedia.wordpress.com/2014/10/28/ccp-central-committee-decision-concerning-some-major-questions-in-comprehensively-moving-governing-the-country-according-to-the-law-forward/.
contentious project with a diverse range of challenges. Civil law codification in modern China is an evolutionary process rather than an absolute break from the law in the past. As such, this article will first survey the history of China’s codification efforts chronologically to draw wisdom from the past. To facilitate discussion, the historical development is divided into three important stages—i.e., the late Qing dynasty, the Republic of China era (1912–1949), and the period after the establishment of the PRC (1949–present). Nonetheless, due to the limitation of length, it is readily conceded that this article does not provide a comprehensive account of all perspectives on civil law codification attempts. Secondly, this article will discuss the current wave of civil law codification within a historical context, including an analysis of the newly promulgated General Provisions and the drafts of the individual books in the forthcoming civil code. Then, this article will highlight the potential difficulties in the codification process based on lessons drawn from past experience. This article will end with a short conclusion.

II. The History of Civil Law Codification in China

A. The Emergence of Civil Law in the Late Qing Dynasty

The history of legal codification in China can be traced back two-millennium to the Spring and Autumn and Warring States periods (480–221 B.C.). But the concept of “civil law” did not emerge until the late Qing dynasty (1840–1911), because the statutory codes in ancient times were only of a public nature, emphasizing the safeguarding of state interests and social hierarchies.

14. See generally id.
After suffering defeats in the Opium Wars, China was forced to open its door to foreign economies.\textsuperscript{20} This brought about the "gradual disintegration" of the peasant economy and the acceleration of capitalism.\textsuperscript{21} Traditional Chinese law became incompatible with these dramatic changes that occurred to both social and economic conditions in China.\textsuperscript{22} Between 1901 and 1911, Qing governors made great efforts to modernize the legal system in line with Western jurisprudence.\textsuperscript{23} The immediate purpose of the legal reform was to abrogate the humiliating extra-territorial rights forced on China by Western states.\textsuperscript{24} In 1911, the Law Codification Commission (\textit{falu bianzuanguan}) in charge of revising Chinese laws completed the Draft Civil Code of the Great Qing ("Qing Civil Code").\textsuperscript{25} Although the Qing Civil Code never came into effect due to the imminent collapse of the Qing dynasty,\textsuperscript{26} its significance cannot be undermined. As the first attempt to draft an independent civil code in China, the Qing Civil Code laid the foundation for future Chinese civil laws.\textsuperscript{27} Nonetheless, the Qing Civil Code has been criticized for two things.

Firstly, the Qing Civil Code failed to "strike a balance" between foreign legal sources and China's civil customs.\textsuperscript{28} The absence of civil law in Chinese legal tradition meant that the codifiers had to introduce an entirely new system of civil law from foreign jurisprudence.\textsuperscript{29} The Qing Civil Code


\textsuperscript{21.} Zi\textsuperscript{ANG} JINFAN (张晋藩), QINGDAI MINFA ZONG LUN (清代民法总论) [The Qing Civil Law Pandect] 239 (1998) (China); Ding Changqing (丁长青), \textit{The Development of Capitalism in Modern Chinese Agriculture, in The Chinese Economy in the Early Twentieth Century: Recent Chinese Studies} 135 (Tim Wright ed., 1992).

\textsuperscript{22.} Chen Lei, supra note 15, at 161.


\textsuperscript{24.} Since 1842, Western countries claimed that the Qing dynasty was "brutal" and unenlightened and thus demanded the authority to exercise the extra-territorial jurisdiction, also called consular jurisdiction. Shiyuan Han, \textit{A Snapshot of Chinese Contract Law From a Historical and Comparative Perspective, in Towards A Chinese Civil Code: Comparative and Historical Perspectives} 235, 236 (Lei Chen & C.H. (Remco) van Rhee eds., 2012). Consular jurisdiction means a foreign consulate having jurisdiction pursuant to its national law over its citizens residing in the treaty ports concession areas. Pawel Czubik & Piotr Szwedo, \textit{Consular Jurisdiction}, OXFORD PUB. INT'L. L. (Aug. 2013), https://opil.ouplaw.com/view/10.1093/law/epil/9780199231690/law-9780199231690-e914#.


\textsuperscript{27.} Lei Chen, \textit{Contextualizing Legal Transplant: China and Hong Kong, in Methods of Comparative Law} 198 (Pier Giuseppe Monateri ed., 2012).

\textsuperscript{28.} Id. at 167.

\textsuperscript{29.} F.T. Cheng, supra note 23, at 285.
was modelled on the German Civil Code (Bürgerliches Gesetzbuch), which consisted of five books and separated commercial law from civil law. The Qing government appointed a Japanese jurist, Dr. Matsuoka Yoshimasa, to compile the first three books because no Chinese jurists were competent enough to draw up a civil code to modernize the legal system. The first three books—General Principles, Law of Obligations, and Law of Real Rights—borrowed a large number of legal concepts from foreign jurisprudence that had never appeared in China’s history. The alien legal concepts and technical vocabularies meant that the Qing Civil Code was neither close to the Chinese reality nor comprehensible to laymen. In addition, the Qing Civil Code failed to incorporate China’s long-standing feudal laws and civil customs because the intense time pressure did not allow the Law Codification Commission to complete an investigation of civil customs in China’s vast territory. The Qing Civil Code merely acknowledged civil customs as one source of law governing cases that were not provided for in article 1 of the code. A number of China’s unique civil customs—for example, hui, dian, lao dian, and xian mai—were completely ignored. The excessive legal transplants and the neglect of Chinese traditional customary laws resulted in the code being unfit for the social circumstances at that time.

Secondly, the Qing Civil Code was criticized for its persistence of conservative ideology. Although the first three books of the code drafted by Dr. Yoshimasa centered on individual rights, the other two books drawn up by Chinese scholars, Family and Inheritance, emphasized the spirit of


31. PHILIP C. C. HUANG, supra note 26, at 16.


33. Id.


35. Chen Lei, supra note 15, at 173.

36. Jiang Yong (江勇), Wushi Nian Lai Zhongguo Zhi Fazhi (五十年来中国之法制) [China’s Legality in the Past Fifty Years], in Zuojin Zhi Wushi Nian — Shenbao Guan Wushi Zhounian Jinhuan Tekan (最近之五十年——申报馆五十周年纪念特刊 (1872–1922)) [THE LAST FIFTY YEARS – THE FIFTIETH ANNIVERSARY SPECIAL ISSUE (1872–1922)] 220 (Shen Newspaper Office ed., 1923) (China). Dian was a Chinese property custom and a land-pawning instrument. Through this form of exchange of land, “dian” sellers generally gave up the use right of their land for monetary liquidity but would still reserve an unlimited right of redemption viable for decades. See Philip C. C. Huang, CHINESE CIVIL JUSTICE, PAST AND PRESENT 236 – 37 (2010); Huang, supra note 26, at 72.


38. See, e.g., Lei, supra note 15, at 167 – 68.
rites and age-old family values instead of respecting individual rights. With the aim of saving the Qing’s rule, legal reformers had to demonstrate their loyalty to the existing monarchy, making it impossible for them to draft a civil code in the fully modern sense.

B. Codification of Civil Law in the Republican Era

The 1911 Revolution led by Dr. Sun Yat-Sen turned China into a republic. Despite the political turmoil, the Republic never ceased in its efforts to establish a civil code. In 1925, the Beiyang government completed the Draft of Civil Law of the Republic of China, which is not discussed further here because it was not a significant innovation from the Qing Civil Code and was never implemented before the national government assumed power in 1927.

Subsequently, the national government promulgated the Civil Code of the Republic of China ("Republic Civil Code") at the end of 1930. In terms of structure and legislative techniques, this code was appraised as “exceptionally well done” compared worldwide with the best civil codes of the twentieth century. At present, the Republic Civil Code remains in force in Taiwan after several amendments. The principal features indicating the advancement of the Republic Civil Code are outlined below.

First, the Republic Civil Code was designed in accordance with Sun Yat-Sen’s revolutionary ideas, namely San Min Chu I, which represent Principles of Nationalism (minzu), Democracy (minquan), and People’s Livelihood (minsheng). San Min Chu I laid the theoretical and ideological foundation for the code to protect social interests, democratic ideas, and the national

42. See generally Li Xiuqing (李秀清), *Ershi Shiji Qianqi Minfa Xinchaoliu Yu Zhonghua Minguo Minfa* (20世纪前期民法新潮流与中华民国法) [The New Trend of the Civil Law in Early 20th Century and the Republican Civil Code], 1 ZHENGFA LUNTAN (政法人) 124 (2002).
economy and replaced the conservative family and clan values prominent in the Qing Civil Code discussed above.

Second, in terms of legal transplants, the Republic Civil Code made progress "from statutory borrowing" to "jurisprudential borrowing." The Japanese and German civil codes remained strongly influential in the Republic Civil Code, as it was partially derived from the Qing Civil Code, but the Republic Civil Code was much more than a mere revision. The lawmakers not only looked at the provisions per se but "scrutinized their underlying legal values." The Republic Civil Code also made good use of many other foreign civil codes, including the Swiss, French, Turkish, and Soviet codes, and transplanted those laws that were compatible with the San Min Chu I and China's conditions at that time. For instance, the Republic Civil Code discarded the historical distinction between civil and commercial law followed by the German and Japanese civil codes, as well as the Qing Civil Code, because merchants in China had not yet emerged as a distinct class. The unification of civil and commercial law precluded many "practical inconveniences," such as the distinctions between civil and commercial jurisdictions and procedures, and was a significant step forward.

Third, when borrowing foreign laws, the Republic Civil Code also took customs and traditional feudal law into consideration. In addition to article 1, which stipulated that civil matters should be decided according to customs in the absence of express provisions in the code, the code incorporated and refined certain civil customs long embedded in Chinese society, such as dian quan and yongdian quan.

The formulation of the Republic Civil Code was successful, at least to a certain extent, especially considering that it took less than two years (1929 to 1930) to complete this voluminous and sophisticated project. It was the sound cooperation between the national government and jurists that

49. Chen Lei, supra note 15, at 171.
50. Id.
52. Chen Lei, supra note 15, at 171; Lei Chen, supra note 25, at 91.
54. Id. at 210.
55. Jianfu Chen, supra note 9, at 330; Keeton, supra note 53, at 207; Chen Lei, supra note 15, at 171.
56. Pound, supra note 44, at 279.
59. Chen Lei, supra note 15, at 172; Pound, supra note 45, at 354.
60. Zhang Sheng (张生), Minguo Minfu Diandi Zhiding: Fube Lifuji Goudi Zuzhibe Yunzu (民国民法典的制定：复立法机构的组织和运作) [The Codification of the Civil Code of the
facilitated the efficient drafting process. The Civil Code Drafting Committee included politicians who coordinated the legislative activities and jurists who were experts in the civil law of various jurisdictions and drafted the legal provisions. But the Republic Civil Code was a product of politicians and jurists: the populace was ignored and precluded from the drafting process. The Legislative Yuan made one attempt to launch a social investigation to hear from the populace and formulate a civil code that conformed to the needs of the society, but the attempt failed due to various limitations, such as time and funding.

C. CODIFICATION OF CIVIL LAW IN THE PRC

The inception of the PRC in 1949 saw a complete abolition of the entire body of nationalist legal norms to develop a new socialist legality. The social, political, and economic conditions in China had dramatically changed: for more than three decades, the Soviet-style planned economy and PRC Marxist ideology dominated the country, deeming private ownership and contractual freedom illegitimate and imposing “formidable barriers” to the evolution of civil law. Nonetheless, the CCP leaders and scholars started to draft a comprehensive civil code since the establishment of the PRC, but they have experienced four rounds of unsuccessful civil law codification so far.  

1. The Mao Era

The PRC, under Mao Zedong’s leadership, made two attempts to draft a civil code. The first attempt was made between 1954 and 1957. A preliminary draft was completed in 1956 (“1956 Draft”) with the aim to “strengthen the people’s democratic legal system and solidify our social
order to carry out socialist construction." The Civil Code of the Russian Soviet Federative Socialist Republic of 1922 ("RSFSR Civil Code") had an overwhelming influence on the 1956 draft, which adopted the terms "citizens" (instead of "natural persons") and "ownership" (instead of "rights in rem") and emphasized the protection of public ownership. The draft of The Law of Obligations took planning legislation and decrees as a separate cause of obligations. This attempt to draft a civil code was interrupted by political campaigns, namely the Anti-Rightists Movement of 1957 and the Great Leap Forward of 1958, and eventually was aborted when the Sino-Soviet relationship broke down.

The civil law codification work did not resume until 1962 when the CCP realized it was necessary to develop a commodity economy. From 1962 to 1964, China's party leaders and scholars made efforts to erase the influence of the Soviet model and create a civil code with Chinese characteristics. Consequently, a draft civil code was completed in 1964 ("1964 Draft"). The 1964 Draft refused to borrow any foreign legislative experience. Concepts commonly found in civil law—such as "right," "obligation," "legal person," and "tort"—were all missing from the 1964 draft. Instead, the draft was full of political slogans, such as "holding up three red flags" and "maintaining ties with the masses," and more closely resembled a "political statement" than a civil code. The second attempt was disrupted by the Four Clean-Ups Movement in 1964 that later upgraded to a decade-long period of political turmoil, known as the Cultural Revolution (1966–1976).
The Cultural Revolution paralyzed the whole country and the legal system was ultimately abolished.\(^82\)

2. After the Reform and Opening-up

After the Cultural Revolution ended in 1976, the third round of civil law codification started with the implementation of the reform and opening-up policy in the late 1970s.\(^83\) At the Third Plenary Session of the 11th Central Committee of the CCP held in 1978, the party officially announced it would shift the focus of its work from class struggle to modernization and embarked on a legal reform to build legitimacy and promote economic reforms.\(^84\) The Legislative Affairs Committee (LAC) of the National People’s Congress (NPCSC) organized a civil law drafting group in 1979, which produced four versions of a draft civil code by 1982.\(^85\) The different versions drafted during this period were mainly based on the civil codes of the former Soviet Union and Hungary, namely the 1962 Fundamental Principles of Civil Legislation of the Union of Soviet Socialist Republic, the 1964 Civil Code of Russian Soviet Federative Socialist Republic, and the Hungarian Civil Code revised in 1978.\(^86\)

In the end, none of these drafts were ever put in place.\(^87\) Because the economic and social relations the civil code aimed to regulate were in upheaval, the CCP soon opted for a pragmatic, “piecemeal” approach of enacting individual civil law statutes first.\(^88\) This shift ended the drafting process of the third round of civil law codification.\(^89\) Moreover, at the


\(^{82}\) See CUANG WANG & NATHAN H. MADSON, *INSIDE CHINA’S LEGAL SYSTEM* 59 (2013).


\(^{85}\) JIANFU CHEN, *supra* note 9, at 334.


\(^{87}\) JIANFU CHEN, *supra* note 9, at 336.

\(^{88}\) Id. at 335; Lei Chen and C.H. (Remco) van Rhee, *Introduction to TOWARDS A CHINESE CIVIL CODE: COMPARATIVE AND HISTORICAL PERSPECTIVES* 61, 61 (Lei Chen & C.H. (Remco) van Rhee eds., 2012).

\(^{89}\) JIANFU CHEN, *supra* note 9, at 335.
beginning of the reform, the theoretical preparation for enacting a civil code was inadequate as well: there were fierce debates between civil law and economic law schools of thought. The scholars argued about the appropriate scope and method of state intervention or governance in economic arenas. In other words, it was "a struggle between more administrative and more individualistic views of (private) law." The acrimonious debates hampered the drafting process because each side tried to defend their own "disciplinary 'territory.'"

Against this backdrop, a series of individual legislations concerning civil matters were enacted under the "step-by-step" approach, including the Marriage Law, the Economic Contract Law, the General Principles of Civil Law ("GPCL"), the Foreign-Related Economic Contract Law, the Succession Law, and the Law on Technology Contracts. The GPCL is

90. Id.
91. Id. at 331 – 32. Civil law regulates the property and personal transactions between equal parties. Economic law can be defined as laws governing private transactions from the viewpoint of the public interest, which is considered as existing between private law and public law, such as the antitrust law, and laws concerning price and distribution controls. Kato, supra note 70, at 437–38. The proponents of economic law contended that the legal relationships between enterprises fell into the region of economic law and civil law should only address legal relationships between individuals and claimed exclusivity over a large part of contract law, intellectual property law, and other laws of a quasi-economic-administrative nature, which narrowed the scope of civil law significantly. Id. at 441 – 42; Liang Huixing (梁慧星), supra note 86.
92. Jianfu Chen, supra note 9, at 332.
93. Id. at 335.
94. Id.
comprised of 156 articles, covering various aspects of civil law and establishing general principles and basic institutions for civil law. It has played the role of an interim and simplified version of a civil code for more than thirty years. The fourth round of drafting a civil code began in 1998 after the 1993 Constitutional Amendments historically abandoned the planned economy and announced the development of a “socialist market economy.” Against this backdrop, the NPCSC established a drafting group consisting of nine prestigious scholars and practitioners. The drafting group adopted a three-step strategy to develop a civil code: first, to enact a uniform contract law by 1999; second, to adopt a uniform property law in four to five years; and third, to complete the civil code by 2010. But China’s accession to the WTO in 2001 required the domestic legal environment to be improved, which forced the NPCSC to change the drafting group’s strategy. The NPCSC demanded the submission of a first draft of the civil code in 2002 for deliberation. The drafting group managed to meet this deadline and finished the draft (the “2002 Draft Code”) within the year. Unfortunately, because it was finished under such extreme time constraints, the 2002 Draft Code was merely a collection of existing laws without innovations and could hardly be seen as a completed work. The draft did not even revise the improper and outdated rules related to the planned economy and, for this obvious reason, did not fit in the new socialist market economy.

102. See id. at 1001 –02.
104. Liang Huixing, supra note 71.
105. Liang Huixing, supra note 86.
106. Qu Tao (渠涛), Qinian Zhijian Liuge Banben (七年之间六个版本) [Six Versions Within Seven Years], ZHONGGUO RENDA WANG (中国人大网) [National People’s Congress Network], para. 5 (Jul. 20, 2005), http://www.npc.gov.cn/npc/oldarchives/zh/hgrdsw/common/zw.jsplabel=wzxlk&id=339723&pdmc=1502.htm.
107. Id.
108. Liang Huixing (梁慧星), Wang Liming (王利明), Sun Xianzhong (孙宪忠) & Xu Guodong (徐国栋), Zhongguo Minfadian Bianzuan: Lishi Zhongglen Yu Shidai Liju (中国民法典编纂: 历史重任与时代力束) [The Codification of Chinese Civil Code: The Historical Responsibility and the Spirit of the Era], 4 ZHONGGUO FALV PINGLUN (中国法律评论) [China L. Rev.] 1, 3 (2015); Liang Huixing (梁慧星), Songshan Shi Huibian Shi De Minfadian Bu Shie Guogong (松散式、汇编式的民法典不适合国情) [The Loose and Compilatory Type of Civil Code Does Not Fit China’s Situation], 21 ZHENGFALUNTAN (政法论坛) [TRIB. POL. SCI. & L.] 9, 9 (2003).
addition, the 2002 Draft Code did not attempt to fill in areas of the law without regulations or reconcile the conflicts between existing laws.\textsuperscript{110}

The 2002 Draft Code was met with strong criticism, and as a result the drafting process ground to a halt.\textsuperscript{111} The legislative strategy moved back to the piecemeal approach.\textsuperscript{112} The Law of Rights in Rem (2007),\textsuperscript{113} the Tort Liability Law (2009),\textsuperscript{114} and the Law on Application of Law in Foreign-related Civil Relations (2010)\textsuperscript{115} were subsequently promulgated. In 2011, Wu Banguo, the former chairman of the NPCSC, declared that China had established “a comprehensive socialist legal system,” which stood as a milestone for the “step-by-step” legislative strategy.\textsuperscript{116}

D. EXPERIENCE DRAWN FROM THE HISTORY

Historical review reflects the fact that each civil code or draft civil code was not just influenced by draftsmen, politicians, and scholars, but by the politics; the economy; and the social, legal and cultural traditions of the time.

Politics plays a determinant role in civil law codifications, deciding not only when to launch or freeze a civil law codification project, but also impact matters of schedules, funding, and personnel resources. Political ideologies also have an impact on the content of civil codes.\textsuperscript{117} As discussed above, the

\begin{enumerate}
\item[] 111. LIANG HUDING (梁慧星), WEI ZHONGGUO MINFADIAN ER DOUZHIENG (为中国民法典而斗争) [STRUGGLING FOR CHINA’S CIVIL CODE] 197 (2002).
\item[] 112. Id.
\item[] 117. Dai Mengyong (戴孟勇), Lun Zhenzhì Yinü Dui Biansuan Minfadian De Yingxiang (论政治因素对编纂民法典的影响) [Discussing the Impact of Political Factors to the Civil Law
tutelage of San Min Chu I led to the Republic Civil Code's emphasis on social order. Both the 1956 Draft and the 1964 Draft produced during the Mao era reflected the strong influence of socialist ideology. The former was patterned on the RSFSR Civil Code, and the latter was almost akin to a political statement. In terms of economic conditions, the market economy is a prerequisite for the development of civil law, as civil law regulates the personal and proprietary relationships between equal parties. Between 1953 (the start of the first Five-Year Plan) and the end of the 1970s (the implementation of the reform and opening-up policy), China had a centrally planned economy. During that period, the national legislature only adopted one piece of legislation in civil law, the Marriage Law (1950). The planned economy system left no room for equality or the autonomy of will, both of which are integral to civil law.

Nonetheless, the current civil law in China retains much of its historical character, which has developed continuously for more than 100 years in spite of stark transformations in underlying ideologies. One reason for this congruity is the abstract approach China took in developing a civil code. Its civil law has tended to develop relatively independently from particular political, economic and social conditions and has come to embrace commonly accepted values in order to govern various social relationships.

Codification], 1 YUNNAN SHEHUI KEJUE (云南社会科学) [YUNNAN SOCIAL SCIENCE] 111, 111, 115 (2018).
118. JIANFU CHEN, supra note 15, at 169; JIANFU CHEN, supra note 48, at 19.
120. Liang Huixing, supra note 71.
121. JIANFU CHEN, supra note 9, at 334.
123. Xianchu Zhang, supra note 8, at 106.
124. Id.
126. JIANFU CHEN, supra note 9, at 330.
over an extended period of time. The historical exploration in previous sections also indicates that the civil law codification in China has been an ongoing process, and the accumulation of legislative experience sets a basis for subsequent codification work.

III. Present Status of Civil Law Codification

After the interruption of the fourth round of civil law codification, the “step-by-step” approach has generated a series of separate civil law statutes covering a wide range of civil law issues. In response to this, scholars started to question whether an all-inclusive civil code was still necessary in China. The work of codifying civil law remained stagnant until 2014 when “civil law codification” was clearly written into the CCP Central Committee’s “Decision on Comprehensively Promoting Several Major Issues in Governing the Country by Law.” Subsequently, the NPC swiftly responded to the CCP’s decision and amended its legislative plan for 2013 through 2018 to incorporate the task of codifying a civil code with the adoption of a “two-step” strategy. The first step is to codify the general provisions of the Chinese Civil Code, and the second step is to complete the codification of individual books of the Chinese Civil Code by 2020. As announced officially in the NPCSC’s Explanations of the Draft of the General Provisions (“Explanations of the General Provisions”), the goal of this round of civil law codification is to arrange the existing civil statutes “scientifically” instead of enacting a whole set of new civil laws. It is a

127. Id. at 338.
128. Lu Qing (陆青), Lun Zhongguo Minfa Zhong De “Jie Fadian Hua” Xianxiang (论中国民法中的“解法典化”现象) [Discussion on the “Decodification” in Chinese Civil Law] 26 PEKING UNIV. L.J. 1483, 1485 (2014); Xianchu Zhang, supra note 103, at 122.
132. Id.
133. Li Jianguo (李建国), supra note 122, para. 2.
process of modifying and perfecting the regulations not adaptable to current
conditions and then formulating regulations in response to newly emerged
situations and issues in the economic and social life rather than a simple
process of compilation.134

The promulgation of the General Provisions in 2017135 indicates that the
first step of the civil law codification has been accomplished. The General
Provisions comprises eleven chapters and 206 provisions, which provides
general rules and principles commonly applicable to different branches of
civil law.136 The General Provisions builds on a basic legal framework for
China’s civil legal system and provides the basis for the formulation of
individual books.137 The General Provisions inherits most rules in the
GPCL, but excludes the specific regulations in the GPCL regarding
contract, tort, and intellectual property, which will be governed by the
individual books or standalone civil laws outside the Chinese Civil Code.
Many scholars claim that the General Provisions is a piece of creative
legislation that keeps up with the time and enhances the protection of civil
rights.138 For instance, article 9 of the General Provisions adds a “green”
principle to the pre-existing fundamental principles of civil law.139 The
green principle requires that the activities of civil subjects shall be conducive
to resource conservation and protection of the environment, thereby
reflecting China’s commitment to sustainable development.140 With the
coming of the Internet era, the General Provisions emphasize the protection of personal information,\textsuperscript{141} data, and network virtual property for the first time.\textsuperscript{142} There are also other provisions reflecting notable changes in the General Provisions, including the stipulation of entitlements for unborn fetuses,\textsuperscript{143} recognition of the right to privacy,\textsuperscript{144} and the extension of the statute of limitations.\textsuperscript{145} Despite these advancements, the General Provisions has its deficiencies, which will be partly outlined in the discussion below. Some scholars argue that the General Provisions should go through another round of adjustments before the comprehensive Chinese Civil Code is born in 2020.\textsuperscript{146}

The remaining task is to enact the individual books of Chinese Civil Code. A first draft of the individual books, the “Individual Books Draft,”\textsuperscript{147} was submitted to the NPCSC on August 28, 2018, for the first deliberation and then disclosed to the public for consultation.\textsuperscript{148} According to the draft, there are six individual books, which cover rights in rem, contracts, personality rights, marriage and family, inheritance, and tort liability.\textsuperscript{149}

\section*{IV. Challenges Facing This Round of Civil Law Codification}

Based on its effects historically, political support has been a key factor influencing the success of codification work.\textsuperscript{150} With the strong support of the CCP, the present round of civil law codification seems to be going well. Yet, there are also other factors responsible for the smoothness of this round of codification. Firstly, the development of China’s market economy has demanded a systematic and comprehensive civil code to govern complicated
civil and commercial relationships. Secondly, the proliferation of separate civil law statutes covering important areas of civil law and the experience accumulated from decades of judicial practice have laid the foundation for the creation of a unified civil code. The establishment of “a comprehensive socialist legal system” makes the goal of enacting a civil code through the systematic arrangement of existing statutes possible. Thirdly, Chinese scholars’ decade-long, continuous, and in-depth research on the various aspects of civil law has provided the theoretical preparation for civil law codification. Given these conditions, it seems as good a time as any to form a Chinese civil code. Nevertheless, in view of past failures, the codification process must be handled with great care. This section identifies several challenges that the current codification work faces with an eye on not only the current situations in China but the lessons drawn from the modern Chinese history. Again, it must be noted that it is unrealistic to address all potential challenges within the confines of this article. The following paragraphs point out the key challenges that may have a direct impact on the legislative process of the civil code.

A. INTENSE TIME PRESSURE

The current round of codification started in March 2015 when the Coordination Group of the Civil Law Codification was established by the LAC of the NPCSC. The “two-step” strategy requires that the promulgation of the General Provisions and the completion of the civil code be achieved in 2017 and 2020 respectively. These two deadlines were given by the NPCSC but were without any additional explanation. One reason for these time constraints may have been that the NPCSC sought to have the civil code completed before the end of the two-term presidency of the current leader of the PRC and that a five-year period sounded appropriate. As shown in the historical review, nearly all the attempts to draft a civil code in China’s history were made in a rush at the inevitable expense of quality. For instance, draftsmen of the Qing Civil Code failed to incorporate civil customs into the code due to time pressures that prohibited them from completing an examination of such customs. A tight schedule

151. Xianchu Zhang, supra note 103, at 113.
152. Id. at 108 – 09.
153. Id. at 130.
154. Shen Juan (沈娟), supra note 131, para. 2.
155. Id. para. 3.
156. Ji Hailong (纪海龙), Lixiang Yu Xianshi De Juli – Dui Zhongguo Minfa Dian Bianzuan De Leng Guancha (理想与现实之间的距离—对中国民法典编纂的冷观察) [The Distance between Ideal and Reality – A Cold Observation of the Compilation of Chinese Civil Code], 6 Huadong Zhengfa Daxue Xuebao ( Journal of East China University of Political Science and Law) 15, 21 (2016). When the schedule of the current round of the civil law codification was made, the presidential term limits had not been removed by the constitutional amendment in 2018.
was also one of the reasons why the drafters of the Republic Civil Code did not take the populace’s opinion into account. By the same token, the completion of the new civil code within five years seems to be a tremendously tight schedule, which bears considerable impact on this round of civil law codification as illustrated below.

Firstly, the aggressive schedule means that the upcoming civil code will not be highly innovative. The promulgation of a comprehensive civil code has long been recognized as a symbol of the maturity of the Chinese legal system, representing a manifestation of the country’s modernization and the achievement of the rule of law. Legal scholars have advocated for various goals to be fulfilled during this round of codification, which reflects grand ambitions of theirs, such as enacting an innovative and progressive civil code and developing a “legislative model of civil law” with great impact on the world. Still, as announced by the NPCSC, the official goals of this round of civil codification are merely to arrange the existing civil statutes “scientifically,” to modify regulations not adaptable to current situations, and to formulate regulations regarding newly emerged situations and issues. These goals are conservative when compared to the scholars’ ambitions, but they are pragmatic when considered with the tight schedule in view.

With these conservative goals, this round of civil codification avoids and will continue to avoid addressing long-term controversial issues that were expected to be addressed by the new civil code. This is unsatisfactory. For instance, with regard to the relationship between civil law and commercial law, the General Provisions already shows that China will insist on the unification of civil and commercial law, which has been followed by China

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158. Zhang Sheng (张生), supra note 60, at 54.
161. Lihong, supra note 101, at 1038.
162. Li Jianguo (李建国), supra note 122, para. 9.
163. A number of legal provisions in the General Provisions indicate that the upcoming civil code will adopt the unification of civil and commercial law. First, article 2 of the General Provisions expresses that “[c]ivil law regulates the personal relationships and property relationships among natural persons, legal persons, and non-incorporated organizations, as equal parties.” Zhonghua Renmin Gongheguo Minfa Zongze (中华人民共和国民法总则) [General Provisions of the Civil Law] (promulgated by the Standing Comm. Nat’l People’s Cong., promulgated Mar. 15, 2017, effective Oct. 1, 2017), 2017 STANDING COMM. NAT’L PEOPLE’S CONG. GAZ. 191, art. 2 (China). This provision shows that the civil code regulates the whole area of private law, including commercial relationships. The general principles of civil law—articles 4, 5, 6, 7, and 8 of the General Provisions—apply to the commercial activities without exception. Chapter 3 of the General Provisions divides legal persons into profit legal persons, non-profit legal persons, and special legal persons, among which profit legal persons are important subjects participating in commercial activities. Chapter 3 also provides regulations for organization structuring and the liquidation procedure of profit legal persons,
since the Republic Civil Code in the 1930s.164 Regarding the typology of legal persons, the General Provisions recasts the division of enterprise and non-enterprise legal persons in the GPCL into the division of profit and non-profit legal persons, rather than the more radical division of incorporated associations and foundations proposed by a number of scholars.65 As mentioned above,166 the six individual books will cover rights in rem, contracts, personality rights, marriage and family, inheritance, and tort liability. This gives the impression that the individual books will be a compilation of existing laws: the Law of Rights in Rem (2007), Contract Law (1999),167 Marriage Law (1980), Adoption Law (1991),168 Succession Law (1985), and Tort Liability Law (2009). The books on the General Provisions of Obligatory Law and the General Provisions of Property Rights proposed by many scholars are still absent and no clear reasons have been provided by the authorities.169 This article does not suggest that the issues which obviously are commercial law provisions. See Jiao Junping (焦军平), Lun Minshang Heyi Lifa Moshi Zai Woguo Minfa Zongze Zhong De juti Tixian (论商合一立法模式在我国民法总则中的具体体现) [On the Concrete Embodiment of the Civil and Commercial Integration in the General Principles of China's Civil Law], 12 XIANDAI JIAOJI (现代交际) [MODERN COMMUNICATION] 57, 57 (2018).

164. Pound, supra note 45, at 351.

165. Li Yongjun (李永军), Yi “Shetuan Faren Yu Caituan Faren” De Jiben Fenlei Goujian Faren Zhidu (以“社团法人与财团法人”的基本分类构建法人制度) [Construction of a Legal Entity System with the Basic Classification of “Corporates and Corporations”], 5 HUADONG ZHENGFA DAXUE XUEBAO (华东政法大学学报) [JOURNAL OF EAST CHINA UNIVERSITY OF POLITICAL SCIENCE AND LAW] 35, 35 – 36 (2016); Xie Hongfei (谢红飞), Minfa Zongze Faren Fenlei De Cengci Yu Biaozhun (民法通则中的法人分类制度) [The Legal Person Classification System in the General Principles of Civil Law], 4 JIAODA FAXUE (交大法学) [SHANGHAI JIAO TONG UNIVERSITY LAW REVIEW] 42, 42 (2016).

166. Li Jianguo (李建国), supra note 122, para. 9.


outlined above have simple solutions, given how they are exceptionally complicated issues, which cannot be fully discussed here. But these examples do show that the lawmakers have attempted to avoid controversial content and the formulation of new books beyond the existing statutes.

Secondly, the time constraints inevitably undermine the quality of the codification work. Although the NPCSC emphasized that the draftsmen should not sacrifice the quality of the codification work for adherence to the schedule, the draftsmen might still give priority to the schedule to avoid delays. One example reflecting this point is that article 145 of the General Provisions basically repeats the content of its article 19. Both provisions recognize the validity of juridical acts conducted by a minor with limited capacity if the acts purely benefit the minor or are appropriate for his or her age and intelligence or if the acts have been consented to or ratified by his or her statutory agent. The General Provisions has only 206 provisions that must be concise in order to cover massive amounts of content. The existence of such unnecessary repetition—such as that seen in articles 145 and 19—should have been avoided. We can speculate that it is a mistake caused by the intense time constraints. This rashness can also be found in the Individual Books Draft. Contrary to the assumption that the individual books of the new civil code would eliminate the previously existing difficulties and uncertainty in the Chinese civil law, the Individual Books Draft is surprisingly unsystematic. Because it would be overambitious to discuss every provision in the Individual Books Draft outright, this article will only provide one observation regarding the doctrines of *negotiorum gestio* and unjust enrichment in the draft to exemplify its unsatisfactory quality.

According to article 118 of the General Provisions, contract, tort, *negotiorum*
gestio, and unjust enrichment are all causes of obligations.\textsuperscript{174} Negotiorum gestio occurs where a person manages another person’s affairs voluntarily without a legal or contractual obligation, and unjust enrichment describes the events where a person obtains benefits at another’s expense without a legal basis.\textsuperscript{175} Both negotiorum gestio and unjust enrichment happen only when there is no contractual relationship between the parties, while the Individual Books Draft places the doctrines of negotiorum gestio and unjust enrichment in Book Two: Contracts.\textsuperscript{176} This inappropriate arrangement is a repercussion of the absence of a book on the General Provisions of Property Rights as mentioned previously, which may also be a result of the time pressure.

B. A Huge Number of Civil Law Rules

In the last four decades since China adopted the piecemeal approach to a civil code, the country has witnessed an explosion of numerous civil laws, regulations, and judicial interpretations to meet the urgent and practical needs of the society. Although the goal of this wave of civil law codification is relatively conservative and realistic, the huge number of existing statutes still inevitably make the formulation of the civil code extremely difficult. The intense time constraints on the codification work discussed above worsen the situation.

Firstly, the current Chinese civil law consists of four levels of legal sources: (1) the individual civil laws that have the status of basic law, e.g., the Marriage Law (1980), Succession Law (1985), GPCL (1986), Guarantee Law (1995),\textsuperscript{177} Contract Law (1999), Law of Rights in Rem (2007), and Tort

\begin{itemize}
  \item \textsuperscript{175} Id. arts. 121 – 22.
  \item \textsuperscript{176} Book Two (Contracts) and Book Six (Tort Liability) of the Individual Books Draft have been through the second deliberation on December 23, 2018, and a second version of Book Two and Book Six has been published. Zhang Mianmian (张绵绵), Minfandian Hetong Bian (Caoan ErCi Shenyi Gao) Zhengqiu Yijian (民法典合同编（草案二次审议稿）征求意见) [Book Contract of Civil Code (Draft for the Second Deliberation) Seeking Opinions], ZHONGGUO RENDA WANG (中国人大网) [NATIONAL PEOPLE’S CONGRESS NETWORK] (Jan. 1, 2019), http://www.npc.gov.cn/npc/flcazqyj/2019-01/04/content_2070151.htm. Even in the second version, the chapters of negotiorum gestio and unjust enrichment are still located in Book Two (Contracts) under the title “Quasi-Contracts”. See id. In Chinese law, there is no definition of what a “quasi-contract” is. The arrangement in the second version is even more confusing. The full draft of the second version of Book Two of the Individual Books Draft is available online. Zhengqiu Yijian: “Minfa Dian Hetong Bian (Caoan Er Ci Shenyi Gao)” quanweijin jishouming (征求意见：《民法典合同编（草案二次审议稿）》全文及说明) [Requests for Comments: Full Text and Description of “Civil Code Contracts” (Second Draft)] chapters 27, 28 (2019), http://www.sinotf.com/GB/102/1021/2012/2019-01-04/3MMDAwMDMyODg3Mw.html (China).
  \item \textsuperscript{177} Zhonghua Renmin Gongheguo Danbao Fa (中华人民共和国担保法) [ Guarantee Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Jun. 30, 1995, effective Oct. 1,
Liability Law (2009); (2) the norms of civil law in administrative laws, e.g., the Land Administration Law (1986); (3) the norms of civil law in administrative regulations, e.g., the Interim Regulations Concerning the Assignment and Transfer of the Right to the Use of the State-Owned Land in the Urban Areas (1990); and (4) the judicial interpretations concerning civil and commercial matters issued by the Supreme People's Court ("SPC").

As mentioned above, the legislative goal of this round of civil law codification is to organize the existing legislations "scientifically," to eliminate inappropriate regulations, and to formulate regulations concerning new issues. The lawmakers must review and consider all the civil laws, regulations, and interpretations carefully. This is a particularly heavy workload and is highly impractical within the given timeframe.

Moreover, practically speaking, no matter how giant a civil code is, it is impossible for the code to compile all existing legislations. The lawmakers have to choose the most fundamental and important content to form the civil code. This view is supported by Shen Chunyao, the director of the


181. Li Jianguo (李建成), supra note 122, para. 2.
NPCSC’s LAC, in the report released on August 27, 2018. He comments that the individual books of the civil code will exclude laws concerning specific groups of people and areas, which should be regulated by the standalone civil laws. One important motive to launch this round of civil law codification is that the promulgation of many separate civil laws over past decades has made it difficult to apply the appropriate laws in judicial practice. If a series of standalone, civil laws still exists after the promulgation of the future civil code, this will detract from a systematic legal framework for Chinese civil law.

Secondly, because the pieces of civil legislation discussed above were enacted at different times, it is not surprising that the laws promulgated in the later period conflict with those enacted earlier. Such conflicts have caused much confusion and should be eliminated—a task that should be tackled in this round of civil law codification. One significant example of conflicts causing confusion are the those that exist between the Contract Law (1999) and the Law of Rights in Rem (2007) on the principle of separation. This principle can be traced back to German law where any transfer of property is separate from the underlying obligation to make such transfer; the validity of the underlying obligation and the validity of property transfer operate independently from each other. When the Contract Law (1999) was formulated, the lawmakers did not have much understanding of the principle of separation. Article 51 of the Contract Law (1999) stipulates that when a person without the right of disposal attempts to dispose of another’s property, the contract shall be effective either upon ratification by the rights holder or if the person without the right of disposal obtains the right of disposal after making the contract. Under this provision, the obligatory contract—e.g., a sales contract—is invalid if the

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184. Id.
185. Lihong, supra note 101, at 1011.
188. Simon Werthwein, supra note 186.
189. The right of disposal includes two categories: ownership of the property or other rights of disposal. See Zhonghua renmin gongheguo luoma hetong fa (中华人民共和国合同法) [Contract Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Mar. 15, 1999, effective Mar. 15, 1999) 1999 STANDING COMM. NAT’L PEOPLE’S CONG. GAZ. 104, art. 132 (China), http://www.npc.gov.cn/wzxl/wzxl/2000-12/06/content_4732.htm. For example, if someone has the ownership of the property, he has also the right of disposal toward the property. If the owner of the property has authorized the seller to dispose of the property, the seller obtains the right of disposal.
ownership of property cannot be transferred because the right holder refuses to ratify the sale or because the seller fails to acquire the right of disposal. This indicates that the validity of the obligatory act is affected by the property transfer. On the other hand, the Law of Rights in Rem (2007) explicitly distinguishes the validity of a contract creating, changing, transferring, or eliminating a real right of a real estate from the dispositive act—namely registration—in article 15. Likewise, the bona fide acquisition rule in article 106 of the Law of Rights in Rem (2007) also reflects that the validity of a sales contract should not be affected by whether the seller has the right of disposal or not. In 2012, the SPC issued the Interpretation of the SPC on Issues Concerning the Application of Law for the Trial of Cases of Disputes Over Sales Contracts (“Sales Contract Interpretation”). Article 3 of the Sales Contract Interpretation states that “[w]here one party claims a contract is void on the grounds that the seller had no ownership or right of disposal over the subject matter at the time of contract formation, the People’s Court shall not support such claims.” This judicial interpretation explicitly points out that the validity of a sales contract is not affected by the seller’s right of disposal. This even more clearly demonstrates an obvious contradiction with article 51 of the Contract Law (1999). This example also shows that conflicts not only occur between laws at the same level but also between laws and judicial interpretations. On the path of civil law codification, the task of identifying and resolving these kinds of conflicts in a rational way increases the burden on lawmakers.

C. THE LACK OF GUIDING IDEOLOGY

History reveals the significant role that politics has played in the course of civil law codification in China. Currently, the political environment of the country is relatively stable, and this round of civil law codification has been


191. Id. art. 106.


193. Id. art. 3.

194. See id.

strongly supported by the CCP.196 But despite political support, the ambiguity in the political ideology guiding the codification work is a problem that needs to be addressed.

As an examination of the legal history shows, political ideologies have an impact on the content of civil codes. According to the Explanations of the General Provisions, this round of civil law codification should “hold high the great banner of socialism with Chinese characteristics” and be “under the guidance of Marxism–Leninism, Mao Zedong Thought, Deng Xiaoping Theory, the Important Thought of Three Represents, and the Scientific Outlook.”197 These guiding ideologies are deemed a “correct political direction” and applicable to every activity conducted in China at present.198 Nevertheless, these ideologies are abstract concepts at a macro-level. The specific ideologies concerning the codification of civil law—the party-state’s commitment to the rule of law, the spirit of civil society, and the protection of private rights—are still absent.199 Without the guidance of more specific ideologies, the legislators have tended to follow the tradition of “legislative pragmatism” in China in order to meet the deadline for completing the civil code.200 Under the legislative pragmatism tradition, legislation should be carried out quickly with rough legal texts in the beginning and be perfected later and gradually.201 The General Provisions basically follows the same structure and largely repeats the provisions of the GPCL, hinting at the continuation of legislative pragmatism in this round of civil codification. Legislative pragmatism prioritizes the efficiency of legislative work and the reduction of legislation costs—e.g., time costs and economic costs—and as a result is likely to undermine the quality of the civil code.202

In addition, the communist ideology does not readily accommodate certain demands of civil law. This incompatibility has triggered constant debates and hindered the process of codification. The heated debate about the inviolable status of public ownership and the equal protection to civil rights that once occurred during the course of civil law codification is one example showing the importance of the guiding ideologies. Since 1982, the Constitution, as the supreme law of China, has entrenched the dominant role of the socialist public sector in the socialist market economy. The

196. Xianchu Zhang, supra note 103, at 109 – 110.
197. Li Jianguo (李建国), supra note 122, para. 7.
198. Id. para. 8.
201. Wang Zu (王竹), Minfa Dianqao Shiyou Zhuyi Silu Xia De “Zhaiya Zongze” Lifu Moshi Yanjiu (民法典起草实用思路下的“债法总则”立法模式研究) [Research on the General Provisions of the Obligatory Law under the Legislative Pragmatism Approach to the Civil Law Codification], 2 SICHUAN DAXUE XUEBAO (ZHEXUE SHEHUI KEJUI BAN) (四川大学学报(哲学社会科学版)) [JOURNAL OF SICHUAN UNIVERSITY (PHILOSOPHY AND SOCIAL SCIENCE EDITION)] 121, 122 (2012).
202. Id.
Constitution guarantees public property a sacred and inviolable status,203 while citizens’ legal private property is only inviolable without the same sacred status,204 thus showing the unequal regard given to public property and private property. The Law of Rights in Rem (2007) was originally intended to grant equal protection to public property and private property according to its draft published in 2005.205 But the equal protection provision provoked fierce criticism arguing that such equality contravened fundamental socialist principles and constitutional provisions.206 As a result, when the Law of Rights in Rem (2007) was finally passed by the NPC, it only stipulates that “the real rights of the state, collectives, individuals, or any other right holders shall be protected by law and shall not be infringed by any entities or individuals.”207 As a compromise, the law does not expressly provide the different kinds of real rights with equal protection. This inequality is still reflected in article 13 of the Constitution208 and article 42 of the Law of Rights in Rem (2007).209 Both provisions allow the state to expropriate or take over private property of citizens without requiring the State to pay fair or reasonable compensation. Then, in 2016, there was a turning point. The CCP and the State Council issued the Opinions on Improving the Property Rights Protection System and Lawfully Protecting
Property Rights ("Opinions"). The Opinions clarified the Party’s attitude that “equal protection should be one fundamental principle regulating property relations” during the civil law codification. Subsequently, article 113 of the General Provisions ultimately stipulates that “[t]he property rights of the parties to civil legal relations shall be equally protected by law.” This is the first time equal protection for proprietary rights has been adopted in the PRC. Correspondingly, article 117 of the General Provisions requires the state to provide “fair and reasonable” compensation when it expropriates or takes over real estate or movable property in the interest of the public. The equal protection for public property and private property is a significant breakthrough and paves the way for the subsequent formulation of the Rights in Rem chapter in the Civil Code.

Although the ideological struggle about the equal protection principle has been temporarily resolved, there are still enduring debates about many other issues due to the lack of specific guiding ideologies. For instance, the debate over whether to include a stand-alone book concerning personality rights in the new civil code is the result of an ideological struggle. Personality rights mainly mean the attributes of human beings that are “innate and inextricably linked with personhood,” including rights to life, health, name, reputation, privacy, portrait, and freedom. The nineteenth CCP National Congress proposed to “protect people’s personal rights, property rights, and personality rights” but not in the context of civil law codification. One school of thought led by Professor Wang Limin from Renmin University advocated for the establishment of a separate book on personality rights in the civil code to reflect the spirit of the nineteenth CCP National Congress.

211. Id. at 2.
213. Wang Liming (王利明) & Zhou Youjun (周友军), supra note 122, para. 3.
Congress, but many other scholars strongly oppose this view. In particular, Professor Liang Huixing from the China Social Science Academy raises the debate to a political level. Professor Liang argues that the Ukraine, the only country with a standalone book on personality rights (within the Ukrainian Civil Code (2003)), provided too great a number of unlimited freedom to its citizens, which contributed to the explosion of the country’s Orange Revolution in 2004. This article has no intention of contributing to this debate or supporting either side but uses the debate as an example of the negative effects caused by the lack of specific guiding ideologies. The issue whether to adopt a separate book on personality rights has been hotly debated for more than a decade and consumed a large amount of the time and energy of academics. This kind of debate could have been averted if an explicit, guiding ideology was available because the adoption of a standalone book on personality rights is more a matter of policy rather than a legal issue.

V. Conclusion

It has been a shared dream for generations of legal scholars and practitioners in China to enact a comprehensive Chinese civil code. While the road has been bumpy for the past century, the four decades of reform and opening up have seen China make significant progress toward a market-oriented economy and civil society, which provide the preconditions for the development of civil law. With the CCP’s strong support, this round of civil law codification has progressed well despite the fact that the codification work still faces a long series of challenges ahead. This article focuses on highlighting the potential challenges for the future process of the civil law codification rather than advising on how to tackle those challenges. Whether the current codification process will generate a civil code meeting the demands of the country remains to be seen.


218. Liang Huixing (梁慧星), Zhongguo Minfa Dian Zhong Buname Shezhi Renge Quan Bian (人格权不能在中国公民社会中设置) [Personality Rights Cannot Be Set in the Chinese Civil Code], ZHONGZHOU (中州学刊) [ZHONGZHOU ACADEMIC JOURNAL] 48, 52 (2016).

219. Lei Chen, supra note 214, at 55.