DOI 10.3868/s050-012-023-0023-8

The Approach to Chinese Modernization of the Rule of Law*

> YU Zhong[a]

Abstract The essence of Chinese modernization of the rule of law is to promote a modern legal system in China. The approach to Chinese modernization of the rule of law refers to the Chinese approach to promoting a modern legal system. By comprehensively reviewing the history and reality, theory and practice, and actual and desirable aspects of Chinese modernization of the rule of law, we can summarize the Chinese approach to promoting a modern legal system. This approach contains various elements, including a leadership system for the rule of law with centralized and unified leadership by the Central Committee of Communist Party of China, a rule of law virtue principle of putting the people first, a functional orientation of the rule of law toward national governance, and a historical-legal consciousness that inherits fine traditional Chinese legal culture. These key elements play a prominent role and can effectively showcase the Chinese approach to promoting a modern legal system. Describing such a Chinese approach not only helps to summarize the fundamental experience of Chinese modernization of the rule of law but also showcases the Chinese logic and Chinese characteristics in this modernization process.

Keywords Chinese modernization of the rule of law, legal system, Party leadership, putting the people first, national governance, traditional culture

The Report to the 20th National Congress of the Communist Party of China (CPC) pointed out that "Chinese modernization is socialist modernization pursued under the leadership of the CPC. It contains elements that are common to the modernization processes of all countries, but it is characterized by features that are unique to the Chinese context." Chinese modernization encompasses various elements. In the context of comprehensively promoting law-based governance, the Chinese modernization of the rule of law is a significant component of Chinese modernization. The essence of modernizing the rule of law in China is to promote a modern legal system based on China's national conditions. Therefore, how should China promote its modern legal system at the desirable level? How is China's modern legal system promoted at the actual level? Taking into account the actual and desirable aspects, as well as history and reality, and theory and practice, what is the Chinese approach to promoting modern legal system? Raising these questions is mainly based on the following considerations.

Firstly, contemplating the Chinese

* This paper is translated from 法律科学 (西北政法大学学报) (*Science of Law* [*Northwest University of Political Science and Law*]), 2023 (2): 16–26.

a Law School, China University of Political Science and Law, Beijing 100088, China

approach to promoting modern legal system helps to describe the characteristics of Chinese modernization of the rule of law. As the socialist modernization of the rule of law led by the CPC, Chinese modernization of the rule of law contains elements that are common to the rule of law modernization process of all countries, but it is more characterized by features that are unique to the Chinese context. If the common features of the rule of law modernization in various countries can be presented by extracting the greatest common divisor of the rule of law modernization in each country (such as due process and human rights protection), then the characteristics of Chinese modernization of the rule of law are a typical Chinese issue. Researching the Chinese approach to promoting the modern legal system can demonstrate the characteristics of Chinese modernization of the rule of law and can focus on presenting the Chinese spirit and Chinese style embodied in the Chinese modernization of the rule of law, that is, highlighting the characteristics of Chinese modernization of the rule of law.

Secondly, contemplating the Chinese approach to promoting modern legal system helps to summarize the basic experience of Chinese modernization of the rule of law. Chinese modernization of the rule of law does not come out of thin air all of a sudden. It must go through a long process of exploration. As early as 1904, LIANG Qichao, one of the well-known Qing Dynasty reformers, proposed, "Today, with all nations in close proximity, competition is increasingly intense. Without an orderly and serious governance internally, we cannot unite our strength to face the outside world." Therefore, "The rule of law is the only ideology that can save our country now."[1] This statement shows that as early as the beginning of the 20th century, the "rule of law" that responded to the demand of "saving our country now" had already drawn the attention of visionary Chinese people. How to promote modern legal system in China, as a practical issue, had already been raised at that time. Since then, until today, in the more than 100 years of modernization process, successive generations of Chinese people have continuously explored the Chinese approach to promoting modern legal system, with both successful experience and lessons learned from failures. These experience and lessons have become a spiritual wealth of the Chinese nation. Researching the promotion plan of the rule of law that gradually becomes clear and consolidated in the process of Chinese modernization is reviewing and summarizing the historical experience of promoting modern legal system.

Lastly, contemplating the Chinese approach to promoting modern legal system helps to understand the constitutive elements of modern legal system in China. What kind of rule of law is Chinese modern legal system? What are its constitutive elements? For example, Lon L. Fuller, based on Western traditions, summarized the relevant requirements of modern legal system in the West as follows: First, laws should be general and can be expressed as a general requirement. Second, laws should

1 LIANG Qichao, 中国法理学史发达史论 (History of Jurisprudence Development in China) (1904), in 梁启超全集 (*Complete Works of LIANG Qichao*), 北京出版社 (Beijing Publishing House), at 1255 (1999).

be published. Third, retroactive laws are truly a monstrosity. Fourth, laws should be clear. Fifth, laws should avoid inadvertent contradictions. Sixth, laws should not require the impossible. Seventh, laws should not be changed frequently. Eighth, consistency should be maintained between official actions and published rules.[2] These eight requirements can be understood as constitutive elements of modern legal system in the West. If such a theoretical summary is necessary, then what are the constitutive elements of Chinese modern legal system? Clearly, this is a question that remains to be answered. Contemplating the Chinese approach to promoting modern legal system helps to answer this question.

Based on the theoretical requirements above, this article examines the history and reality, theory and practice, and actual and desirable aspects of Chinese modernization of the rule of law modernization. It describes the Chinese approach to promoting modern legal system from four perspectives: the leadership system of rule of law under the centralized and unified leadership of the Party Central Committee, the rule of law virtue principle of putting the people first, the role of rule of law in national governance, and the historical-legal consciousness that inherits the excellent traditional Chinese legal culture.

I Rule of Law Leadership System Under the Centralized and Unified Leadership of the Party Central Committee

Chinese modernization is the socialist modernization led by the CPC. As an element of Chinese modernization, Chinese modernization of the rule of law is naturally led by the CPC. This means that modern legal system in China is promoted under the leadership of the CPC. Furthermore, if we refer to the system of the Party's leadership in rule of law as the leadership system of the rule of law, then the centralized and unified leadership of the Party Central Committee is the key to this leadership system of the rule of law. In this sense, the leadership system of the rule of law under the centralized and unified leadership of the Party Central Committee can be considered as a core in the promotion of modern legal system in China. As for the theoretical logic embodied in the leadership system of the rule of law under the centralized and unified leadership of the Party Central Committee, it can be explained in three progressively interconnected aspects.

A | The Party Being a Vanguard by Nature and a Leader in the Rule of Law

Regardless of whether it is leadership of the Party in the rule of law or the leadership system of the rule of law, the key is the leadership of the Party. If we want to explore the legal basis of the Party's leadership, we should look at the nature of the Party. At this point, the "General Principles" Section of the Constitution of the CPC stipulates that "the CPC is the vanguard of the Chinese working class, the Chinese people, and the Chinese nation." In short, the CPC has the

2 Lon L. Fuller, 法律的道德性 (*The Morality of Law*), translated by ZHENG Ge, 商务印书馆 (The Commercial Press), at 55–96 (2011).

nature of a vanguard.

What is a vanguard? How to understand the vanguard nature of the Party? In this regard, Carl Schmitt provided an explanation in his article "The Current State of the History of Parliamentary Thought." He said, "The spirit of an era does not simultaneously entrust itself to the consciousness of every individual, nor does it appear in every member of the dominant nation or social group. There is always a vanguard of the world spirit, a developing and self-conscious apex, a vanguard that has the right to take action because it possesses correct knowledge and consciousness."[3] The "right to take action" mentioned by Schmitt essentially refers to leadership.

The basis for this leadership is the possession of "correct knowledge and consciousness." From this, we can catch the essence of the vanguard: A vanguard is not only a vanguard of "knowledge," representing the development direction of "advanced knowledge," but also a vanguard of "consciousness," representing the development direction of "advanced consciousness." Furthermore, how does the nature of the Party as a vanguard transform into the Party's leadership? Regarding this question, Antonio Gramsci provided a quite insightful explanation. He said, "Various ideologies that emerged in the past transformed into different 'political parties,' confronting and conflicting with each other until one or at least one of them unites, prevails, and communicates in society—not only bringing about unity in economic and political objectives but also causing unity in spirit and morality, giving rise to various problems, and the struggle revolving around these problems is not based on group interests but on a 'universal' basis, thereby resulting in a fundamental social group's leadership over a series of subordinate social groups."[4] According to Gramsci's argument, leadership is not only leadership in knowledge and culture but also leadership in spirit and morality, and certainly, it is also leadership in ideology. He also said, "A social group can and must exercise 'leadership' before winning political power (one of the primary conditions for winning political power)."[5]

Gramsci's description of this law can be used to explain the causal relationship between the nature of the CPC as a vanguard and its leadership. Firstly, the CPC emerged in the early period of the Republic of China, amidst a political landscape of various parties conflicting and competing with each other. Secondly, after its founding, the CPC went through various struggles and cooperations with other parties, such as the Kuomintang. Lastly, the CPC "prevailed and gained the upper hand," not only forming a unity in political objectives but also promoting unity in spirit and virtue. Therefore, even before winning the nationwide political power in 1949, the CPC had already formed its leadership over the entire society of China. For example, during the Yan'an period in the late 1930s and early 1940s, despite the scarcity of

3 Carl Schmitt, 政治的浪漫派 (*Political Romanticism*), translated by FENG Keli & LIU Feng, 上海人民出版社 (Shanghai People's Publishing House), at 206 (2004).

4 Antonio Gramsci, 狱中札记 (*Selections from Prison Notebooks*), translated by CAO Leiyu, JIANG Li & ZHANG Xian, 河南大学出版社 (Henan University Press), at 227 (2014).

5 See Gramsci, fn. 4 at 59.

material conditions, the CPC still attracted a large number of talented individuals to Yan'an from all corners of China. During this time, prominent overseas Chinese leader CHEN Jiageng publicly stated, "The hope of China lies in Yan'an." Diplomats from the U.S. Embassy in China, Davis and Weiss, wrote in their report to the U.S. State Department that "In a few short years, the Communist Party 'will become the sole dominant force in China.'"[6] Such historical processes and facts are sufficient to prove that the CPC not only has the self-consciousness of a vanguard but is also a true vanguard.

The name and reality of the CPC as a vanguard not only provide a legal basis for the Party's leadership (including its leadership in the rule of law), but also ensure that the rule of law under the leadership of the CPC can possess an advanced position in the global process of rule of law modernization. As mentioned above, the prerequisite for acting as a vanguard is to possess correct knowledge. In other words, only by consistently representing the development direction of advanced knowledge and culture can one become a vanguard. Within the spectrum of advanced knowledge and culture, advanced knowledge and culture of the rule of law play a vital role. This means that the CPC possesses correct and advanced knowledge and culture of the rule of law, which is inherent in the nature of the CPC as a vanguard. From this perspective, the nature of the CPC as a vanguard not only provides legal support for the Party's leadership in the rule of law, but also ensures that the rule of law under the leadership of the CPC is advanced and modernized.

B | The Centralized and Unified Leadership of the Party Central Committee: Key to the Rule of Law Leadership System

The above analysis aims to clarify why it is important to uphold the Party's leadership in the rule of law. Building upon this foundation, we can further discuss how the Party's leadership in the rule of law is carried out. The answer lies in the Party's leadership system for the rule of law, which is known as the rule of law leadership system. The key to this system is the Party Central Committee's centralized and unified leadership in the rule of law. In other words, the Party's leadership in the rule of law is specifically manifested through the centralized and unified leadership system of the Party Central Committee.

From an ideological perspective, DENG Xiaoping made principled statements regarding such a leadership system in 1988, "The main point I want to make is that the central leadership must have authority. Reform can be successful only if it is conducted under proper leadership and in an orderly fashion. Otherwise, everything will be a mess, with everyone going their own way. How can we allow that?" In order to prevent everyone from going their own way, "We must make it a principle that reform is to be carried out under a unified central

6 Party History Research Center of the CPC Central Committee, 中国共产党的九十年 (*Ninety Years of the CPC*), 中共党史出版社(Party History Publishing House), and 党建读物出版社 (Party Building Reading House), at 235 (2016).

leadership."[7] The "the central leadership must have authority" means strengthening the unified leadership of the central authorities. Although DENG Xiaoping's statements were made in the context of deepening reforms, they have universal guiding significance. Deepening reforms undoubtedly requires strengthening the unified leadership of the central authorities, and the rule of law governance is no exception. Without the unified leadership of the central authorities, the rule of law would also become chaotic and mired in disorder.

From an institutional perspective, the rule of law leadership system, as a system for the Party's leadership in the rule of law, is always embedded within the Party's organizational and leadership systems. Regarding the Party's organizational and leadership systems, Article 10 of the Constitution of the CPC sets out the basic principles of democratic centralism, with the first point stating: "Individual Party members defer to Party organizations, the minority defers to the majority, lower-level Party organizations defer to higher-level Party organizations, and all organizations and members of the Party defer to the National Congress and the Central Committee of the Party." This explicit provision in the Party Constitution provides a formal institutional basis for the rule of law leadership system under the centralized and unified leadership of the Party Central Committee.

From a historical experience perspective, the rule of law leadership system under the centralized and unified leadership of the Party Central Committee is a conclusion drawn by the CPC after comprehensively summarizing its significant achievements and historical experience in the past century. In the Resolution of the CPC on the Major Achievements and Historical Experience of the Party over the Past Century, which was adopted on November 11, 2021, the system of centralized and unified leadership by the Party Central Committee is repeatedly emphasized. For example, in the Preamble of the Resolution, it states that "A review of the Party's major achievements and historical experience over the past century" is necessary for "firmly upholding uphold the Party Central Committee's authority and its centralized, unified leadership and to ensure that all Party members act in unison."[8] In the section on "A New Era of Socialism with Chinese Characteristics," the Resolution further highlights that, "The centralized, unified leadership of the Central Committee is the greatest principle of the Party's leadership, and upholding and strengthening this is the common political responsibility of each and every Party member. In upholding Party leadership, all Party members must, first and foremost, make a clear stance in maintaining political integrity to ensure that the whole Party obeys the Central Committee." It also emphasizes that

7 DENG Xiaoping, 中央要有权威 (The Central Authorities Must Have Authority) (Sep. 12, 1988), in 邓小平文选 (*Selected Works of DENG Xiaoping*), Vol. 3, 人民出版社 (People's Publishing House), at 277–278 (1993).

8 中共中央关于党的百年奋斗重大成就和历史经验的决议 (Resolution of the Central Committee of the CPC on the Major Achievements and Historical Experience of the Party over the Past Century), 人民日报 (*People's Daily*), p.1, Nov. 17, 2021.

"adhering to the Party leadership primarily requires being politically firm, ensuring the Party's absolute leadership over the whole Party." Furthermore, the Resolution states that "Since the 18th CPC National Congress, the Party Central Committee's authority and its centralized, unified leadership have remained robust, the Party's leadership systems have improved, and the way in which the Party exercises its leadership has improved. There is greater unity among all Party members in terms of thinking, political resolve, and action, and the Party has significantly boosted its capacity to provide political leadership, give guidance through theory, organize the people, and inspire society."[9] In addition, in the section on "The Historical Experience from the Party's Endeavors over the Past Century," the Resolution once again emphasizes, "To govern our Party, which is the largest in the world, and our country, which is the most populous in the world, we must uphold the Party's overall leadership, especially the Central Committee's centralized, unified leadership, adhere to democratic centralism, and ensure that the Party exercises overall leadership and coordination."[10] These discussions on the centralized and unified leadership by the Party Central Committee, as a reflection of historical experience, provide a historical basis for the rule of law leadership system under the centralized and unified leadership of the Party Central Committee.

From both the perspective of ideological foundation, institutional basis, and historical experience, it is necessary to uphold the rule of law leadership system under the centralized and unified leadership of the Party Central Committee. Building upon this leadership, the Report to the 20th CPC National Congress further proposes to "uphold and strengthen the centralized, unified leadership of the Party Central Committee. We will improve the leadership systems by which the Party exercises overall leadership, coordinates the efforts of all sides and refine the mechanisms through which the Party Central Committee's major decisions and plans are implemented. This will ensure that all Party members closely follow the Central Committee in terms of political stance, orientation, principles, and path and that the Party's solidarity and unity are maintained." In summary, the rule of law leadership system under the centralized and unified leadership of Party Central Committee is the result of combining the requirements of the Report to the 20th CPC National Congress with the law-based governance on all fronts. It represents the specific embodiment of the requirements of the Report to the 20th National Congress within the framework of modern legal system promotion.

C | Developing and Innovating the Rule of Law Leadership System Under the Party Central Committee's Centralized and Unified Leadership

Over the past few decades, the rule of law leadership system under the Party Central Committee's centralized and unified leadership has continuously developed,

9 Id. at 6.
10 Id. at 8.

innovated, and constantly improved through its evolution. Looking back at history, we can see that in 1956, the Party Central Committee established the Central Legal Affairs Commission to exercise its leadership over the rule of law. In 1958, the Central Political and Legal Affairs Group was created to replace the Central Legal Affairs Commission. In 1980, the Party Central Committee launched the Central Political and Legal Affairs Commission. In 1988, it decided to abolish the Central Political and Legal Affairs Commission and replaced it with the Central Political and Legal Affairs Leading Group. In 1990, it decided to restore the Central Political and Legal Affairs Commission. The changes from the Central Legal Affairs Commission to the Central Political and Legal Affairs Group, and then to the Central Political and Legal Affairs Commission, and the return to the Central Political and Legal Affairs Commission from the Central Political and Legal Affairs Leading Group, indicate the evolution of the Party Central Committee's leadership system in the rule of law.

In 2018, the Party Central Committee established the Commission for Law-based Governance, marking the first time such an institution was set up in the history of the CPC. The purpose was to reinforce the Party Central Committee's centralized and unified leadership in comprehensively advancing the rule of law. President XI Jinping indicated three reasons for the creation of this Commission. "Firstly, it is a requirement for putting the guiding principles of the 19th CPC National Congress into effect and for strengthening the Party's centralized and unified leadership over law-based governance. Secondly, it is a requirement for studying and resolving major issues and problems related to law-based governance, and for coordinating and promoting Chinese socialist rule of law system with Chinese characteristics and the advance of a socialist rule of law country. Thirdly, it is a requirement to promote the 'Two Centenary Goals' and provide legal guarantees for the great rejuvenation of the Chinese nation and the Chinese Dream."[11]

Regarding the terms of references of the Commission for Law-Based Governance under the CPC Central Committee, President XI notes that "The Commission is responsible for observing general development trends, assessing the overall situation, and engaging in major works. It should take a high stance, have a broad vision, and think deeply. It should address pressing issues while planning for long-term work, with the main focus on top-level design. It should lead in making major decisions and addressing significant issues related to the rule of law. It should maintain political integrity, think in terms of the big picture, follow the leadership core, and keep in alignment with the central Party leadership. Moreover, it should have full confidence in the path, theory, system, and culture of socialism with Chinese characteristics. In addition, it should take the right position, fulfill its duties, and proactively plan and

11 XI Jinping, 在中央全面依法治国委员会第一次会议上的讲话 (Speech at the First Meeting of the Commission for Law-Based Governance Under the CPC Central Committee) (Aug. 24, 2018), in 论坚持全面依法治国 (*On Advancing Law-Based Governance on All Fronts*), 中央文献出版社 (Central Party Literature Press), at 222–225 (2020).

determine the overall ideas and key tasks for the advance of the socialist rule of law with Chinese characteristics. It should consider law-based governance in the context of the overall work of the Party and the country, and propose strategic and forward-looking plans. It should coordinate and make well-conceived decisions on major issues related to the rule of law, ensuring centralized leadership, efficient decision-making, and unified deployment. It should coordinate and integrate all resources and efforts to promote the rule of law, with a focus on resolving major issues that ministries and local governments cannot address, thereby coordinating the resolution of significant disagreements between ministries and local governments. It should promote the integration of socialist core values into legislation, law enforcement, judicial activities, and compliance, making socialist rule of law a good system of laws and governance."[12] From the perspective of practical effects, since its establishment, this Commission has "made a series of major decisions and plans for law-based governance from a global and strategic perspective, promoting historic changes and achievements in the advancement of socialist rule of law in China, and securing significant progress in the practice of law-based governance."[13]

In summary, the Commission aims to strengthen the Party Central Committee's centralized and unified leadership over the rule of law, representing the latest achievement in innovating and developing the centralized and unified leadership of the Party in the field of rule of law.

II The Rule of Law Virtue Principle of Putting the People First

The principle of putting the people first in the rule of law not only consolidates the virtuous foundation of modern legal system in China, but also demonstrates the Chinese characteristics of modernizing the rule of law. Therefore, it has an indispensable and important position in the Chinese approach to promoting modern legal system. To fully understand the virtue principle of putting the people first in the rule of law, it is necessary to focus on the following three aspects.

A | The Rule of Law's Virtue and Virtue Principle

In the lineage of modern legal theory or the theory of rule of law, the relationship between law and virtues has always been a subject of widespread and extensive attention. Particularly in the perspective of natural law or value-based legal theory, the relationship between law and virtues almost constitutes the core of its theoretical evolution. In contemporary Chinese legal textbooks, there is usually a dedicated chapter discussing the relationship between law and virtues. In summary, in the history of legal theory, there have been numerous discussions on the virtuous nature of law. In comparison, the virtuous nature of rule of law as a legal theory issue has not received

12 Id. at 235–236.

13 XI Jinping, 以科学理论指导全面依法治国各项工作 (Applying Sound Theories to Better Guide Law-Based National Governance in All Fronts) (Nov. 16, 2020), in 论坚持全面依法治国 (*On Advancing Law-Based Governance on All Fronts*), 中央文献出版社 (Central Party Literature Press), at 2 (2020).

sufficient attention to date.

To understand the morality of the rule of law, it is necessary to first understand virtue. So what is virtue? According to Aristotle, "Virtue is neither an emotion nor a capacity; it must, therefore, be a disposition. Thus, we have determined the nature of virtue in terms of its category. But we not only need to explain that virtue is a disposition, but also what kind of disposition it is. It can be said that every virtue both makes the thing for which it is a virtue good and enables it to function well." In short, the virtue of something is the quality that ensures its state and actions are good.[14] Therefore, the virtue of the rule of law is the quality that ensures the rule of law maintains good performance. However, whether the performance of the rule of law is good depends on its core concerns. For example, in the view of SHANG Yang and QIN Xiaogong, two reformists of the Qin Dynasty, if the rule of law can deliver a prosperous country and a strong military, then it has virtue. Thus, in their eyes, prosperity, and strength are the virtue principle of the rule of law.

However, the understanding of the rule of law by SHANG Yang represents only one type of rule of law. According to the dualistic division proposed by Wang Chong in the Han Dynasty, the rule of law anticipated by SHANG Yang can be referred to as the Qin-style rule of law. In contrast, there is another type of rule of law, known as the Wei-style rule of law. Certainly, WANG Chong does not use the term "rule of law," but rather the concept of "laws and regulations." He states, "To nurture the soldiers of the armed forces, to have clear rewards and punishments, strict laws and harsh penalties, and to enrich the state and strengthen the military, this is laws and regulations. Look at the strength of Qin, would they be willing to do this? The downfall of the other six states was all due to the destruction by the Qin army. The soldiers of these six states were not lacking in skill, and their forces were not weak, yet they were defeated and destroyed. The strong could not overcome the weak, and the many could not prevail over the few. Even with clear laws and regulations, what benefit did they bring? If a child challenges Meng Ben, a renowned Qin warrior, and Meng Ben becomes angry, if the child wields a weapon and fights with Meng Ben, the child will definitely not win because he lacks strength. Meng Ben becomes angry, but the child shows respect and conducts himself with proper manners, and Meng Ben cannot bring himself to attack. This is the relationship between Qin and Wei, just like Meng Ben and the child. If Wei has laws and regulations, Qin will not fear them, just as the child wields a weapon and Meng Ben does not avoid it. Respecting the virtuous and honoring the worthy is not merely a matter of the child showing respect and conducting himself with proper manners. When strength is lacking, virtue should be cultivated, and when the military is strong, power should be exerted. Qin, with its strong military, is invincible in terms of power. When its troops retreat and do not invade the territory of Wei, it is due to the virtuous conduct of the army and the ceremonial

14 Aristotle, 尼各马科伦理学 (*Nicomachean Ethics*), translated by LIAO Shenbai, 商务印书馆 (The Commercial Press), at 45 (2003).

practices of high Wei culture. Respecting the wise is a law and regulation for a weak country and assistance for the weak with limited strength. How can one say this is not a merit of laws and regulations?"[15] The "merit of laws and regulations" mentioned by WANG Chong is equivalent to the "merit of the rule of law," which refers to the virtue of the rule of law. If the virtue principle of the Qin-style rule of law can be summarized as "enriching the country and strengthening the military," then the virtue principle of the Wei-style rule of law is primarily "showing respect and conducting oneself with proper manners."

If we go beyond WANG Chong's dualistic division of laws and regulations and take a broader perspective, we can see that different countries and different eras have their own specific virtue principle for the rule of law, which can be referred to as the specific "merit of laws and regulations." For example, in medieval Europe, the rule of law virtue principle was primarily centered around the belief in God. Just as Thomas Aquinas said, eternal law "derives from the wisdom of God," and "God, by his wisdom, is the creator of all things, and his relationship to all things is like that of an artist to his products of art." "Since eternal law is the plan of government by the supreme ruler, all human plans of government by those who hold subordinate authority must be derived from eternal law."[16] God is the creator of all things and the greatest ruler. In such a historical context, the belief in God became the virtue criterion for the rule of law in medieval Europe.

In 19th-century Europe, liberalism prevailed, and the virtue criterion of the rule of law was primarily focused on safeguarding individual freedom or the primacy of the individual. In such a historical context, if the rule of law could safeguard and guarantee individual freedom, then it is considered a law of high quality. On the surface, the protection of individual freedom or the primacy of the individual seems like a perfect virtue criterion. However, behind the notion of individual freedom or the primacy of the individual, there is the freedom of capitalists to dictate wages and working hours, as well as the freedom of the poor to sleep under bridges or on the streets at night. This is precisely what Engels said in his article in 1844. The England Constitution in the Condition of the Working Class in England: "England is undoubtedly the freest country on earth (excluding North America), that is to say, the country with the least non-freedom."[17] However, "We see that the monarchy and the House of Lords have lost their significance; we see by what means the House of Commons, which holds the real power, supplements its members; and now the question arises, who actually rules England? It is property." "The English Constitution has actually ceased to exist; the whole lengthy legislative process is purely a farce," and "We see that in the English Constitution, all the various

15 HUANG Hui, 论衡校释 (*On the Interpretation of Balance*), 中华书局 (Zhonghua Book Company), at 380 (2018).

16 Thomas Aquinas, 阿奎那政治著作选 (*Selected Political Works of Aquinas*), translated by MA Qinghuai, 商务印书馆 (The Commercial Press), at 113–114 (2011).

17 Karl Marx & Friedrich Engels, 马克思恩格斯全集 (*The Complete Works of Marx and Engels*), Vol. 1, 人民出版社 (People's Publishing House), at 678 (1956).

powers are combined purely on the basis of fear."[18] This virtue criterion of the rule of law centers around individual freedom that gives rise to Marxism and the powerful international communist movement, as well as the so-called welfare legislation in the 20th century that aims at social equality as the virtue criterion of the rule of law.

B | Putting the People First as the Virtue Principle and Cultural Origin of the Rule of Law

If we understand the virtue of the rule of law as the quality that enables the rule of law to become better and more efficient, then the option of "putting the people first" is the virtue principle of the rule of law in the promotion of modern legal system in China. Regarding the rule of law guided by the virtue principle of putting the people first, it means respecting the will of the people and safeguarding their interests. In simple terms, it is a rule of law that exists for the sake of the people.

The virtue principle of putting the people first in the rule of law embodies the Chinese characteristics of modernizing the rule of law. This is because putting the people first is a virtue principle deeply rooted in excellent traditional Chinese culture and has a profound cultural foundation, whose origins can even be traced back to GAO Tao during the time of Emperors Yao and Emperor Shun.

According to the records in the *Book of Documents*, in a scene where Emperor Shun was present, GAO Tao and Yu discussed governance of the state. GAO Tao first emphasized the significance of virtue in improving governance, and then presented two key points for the practical application of virtue in governance: "knowing the individuals" and "ensuring the well-being of the public." During the Qing Dynasty, SUN Xingyan, a scholar of the Qing Dynasty, explained these two points by stating that "the public" refers to the common people, while "the individuals" refers to government officials. He cited the verse "Suitable for the common people, suitable for the officials" from the *Book of Songs*, and explained that although "the public" and "the individuals" have similar meanings, they should be distinguished. SUN Xingyan further referenced the historical text the Biography of XUE Yi from the *Book of Han*, where GU Yong wrote, "There is no greater virtue for emperors and kings than knowing the individuals. Knowing them facilitates the proper appointment of officials, efficient governance, and the elimination of corruption." By citing these texts, SUN Xingyan explained GAO Tao's key points mentioned above. GAO Tao not only emphasized the importance of personal cultivation and harmonious relations within the family when advising Yu, but also highlighted the significance of these key points in governing a state. He recognized that within the extended family and among the nobility, people's talents and abilities vary. Therefore, the focus should be on knowing individuals and utilizing their skills. As for the common people, they were at the lower stratum, and their well-being should be prioritized. Only by ensuring their security and stability can the

18 Id. at 687–689.

government secure their long-term goals."[19] ZENG Yunqian, a modern scholar, believed that knowing the individuals enables effective utilization of talent, while ensuring the well-being of the public fosters their loyalty.[20] By considering these annotations and explanations, we can better understand GAO Tao's core point: The key to governance lies in virtue, and the practical application of virtue primarily involves "knowing the individuals" and "ensuring the well-being of the public."

GAO Tao's points on "knowing the individuals" and "ensuring the well-being of the public" were primarily conveyed to Yu. In other words, Yu was aware of GAO Tao's perspective on governance. According to the "Song of the Five Sons" in the *Book of Documents*, Taikang, who was Yu's grandson and Qi's son, failed to fulfill his responsibilities and lost his virtuous character when he came to power as emperor. The people began to develop doubts about him. In such a political context, Taikang engaged in hunting and leisure activities instead of governing. His five younger brothers complained about him and reiterated the teachings of their "ancestors," which they recorded in the "Song of the Five Sons." One of the lines states, "Our ancestors taught us that the people can be approached but not demeaned. The people are the foundation of the state, and the stability of the state lies in its foundation."[21] If we interpret the teaching of "our ancestors" as that left behind by their grandfather, Yu, and combine it with the dialogue presented in the "GAO Tao's Strategy," then the phrase "the people are the foundation of the state" and GAO Tao's concept of "ensuring the well-being of the public" are culturally interconnected. The Five Son reiterate the teachings of their "ancestors," which actually originated from GAO Tao's discussions on virtue, knowing the individuals, and ensuring the well-being of the public. After going through the process of transmission from GAO Tao to Yu and then to the Five Sons, the principle of "the people are the foundation of the state" was established as a fundamental virtue principle, continuing to pass down as the core of Chinese traditional culture.

The progression from the ancient Chinese concept of "the people are the foundation of a state" to the contemporary virtue principle of "putting the people first" reflects the creative transformation and innovative development of Chinese traditional culture. In traditional China, "the people are the foundation of a state" primarily served as a political virtue principle, while in today's China, "putting the people first" serves both as a principle of the political virtue and as a principle of the rule of law.

C | Applying the Rule of Law Virtue Principle of Putting the People First in the Rule of Law Practice

The virtue principle of putting the people first in the rule of law has a strong practical

19 SUN Xingyan, 尚书今古文注疏 (*Commentaries on the Ancient Prose of the Book of Documents*), edited by CHEN Kang & SHENG Dongling, 中华书局 (Zhonghua Book Company), at 78 (1986).

20 ZENG Yungan's note, 尚书 (*Book of Documents*), edited by HUANG Shuhui, 上海古籍出版社 (Shanghai Classics Publishing House), at 27 (2015).

21 WANG Shishun &WANG Cuiye's interpretations and notes, 尚书 (*Book of Documents*), 中华书局 (Zhonghua Book Company), at 369 (2012).

orientation and broad application in the process of modernizing the rule of law in China. In any aspect, field, level, or dimension of modern legal development, the virtue principle of putting the people first should be followed. Its key points of practice can be explained from two different perspectives.

On the one hand, it is important to respect the people's creativity in the field of the rule of law. History is created by the people, and ultimately, the rule of law is also created by the people. According to the virtue principle of "putting the people first" in the rule of law, the promotion of modern legal system in China should respect the people's creativity. In this regard, tremendous practices have already been formed, and valuable experiences have been accumulated. For example, during the Yan'an Period (mid–1930s to late 1940s), the leaders of various anti-Japanese democratic political institutions, led by the CPC, were elected by the people. "In practical voting, the masses had many creative methods, such as using beans, drawing circles, drawing bars, and burning holes on paper with incense for election purposes."[22] The creative contributions of the people in the field of electoral rule of law have been adequately respected. For example, "In 1978, Anhui Province suffered from a severe drought, and the autumn planting faced serious difficulties. In response to this grim situation, the Anhui Provincial Party Committee decided to lend some land to farmers for growing wheat and vegetables. The grain and vegetables produced were not subject to compulsory purchase or included in the quota for grain requisition." "In November of that year, inspired by the initiative to lend land and stimulate villagers' production enthusiasm, some grassroots cadres and villagers in certain areas spontaneously broke through the restrictions of the pre-existing system and adopted the practices of contracting production to village production groups and household responsibility system. In Xiaogang Village, Liyuan Commune, Fengyang County of Anhui Province, 18 households of villagers created the 'household responsibility system,' where the village production team reached an agreement with each household. They fixed the amount of grain that should be turned over to the state and to the collective, and the remaining harvest belonged to the farmers themselves. This approach was simple and practical, and was highly welcomed by the farmers. The Sichuan Provincial Party Committee also supported villagers in implementing the household responsibility system and allowed and encouraged villagers to engage in legitimate household sideline businesses. Similar practices were adopted in other provinces as well. These bold experiments marked the beginning of rural reform in China."[23] From the perspective of the rule of law, the innovation of the 18 villagers in Xiaogang Village constituted, to a significant extent, the origin of modernization of the rule of law in rural China, and their achievements in the field of rural rule of law have been

22 See Party History Research Center of the CPC Central Committee, fn. 6 at 231.

23 See Party History Research Center of the CPC Central Committee, fn. 6 at 689.

highly respected for decades.

On the other hand, the rule of law should be promoted to serve the people. On the other hand, the rule of law serves the people. This requirement may seem abstract, but it has actually been transformed into vivid practice. Particularly, in law enforcement and judicial activities, the practice of rule of law serving the people can be seen everywhere. For example, the judicial activities of ZHOU Shuqin, the chief judge of the Silin Court in Guixi City, Jiangxi Province, exemplify the virtue principle of serving the people. According to a report in 2021, "With a deep love for the judicial profession and a strong affection for the people, she has dedicated 18 years of her career to the frontline of the people's court in resolving conflicts and disputes. With her perseverance and dedication, she has written touching stories of justice for the people." One of the stories goes as follows: "In the first case ZHOU Shuqin handled, both the plaintiff and the defendant were only fifteen or sixteen years old. They had fallen out just six months after getting engaged. Due to the issue of dowry, the families on both sides created chaos in the courtroom, and the case reached a deadlock. ZHOU Shuqin tirelessly shuttled back and forth, presenting arguments, expressing emotions, and reasoning. Her efforts paid off, and the case took a turn for the better, with a mediation agreement bringing a satisfactory resolution to the lawsuit. 'At the moment I closed the case file, I was filled with mixed emotions,' ZHOU Shuqin recalled to the reporter. From that moment on, she silently reminded herself to be a judge with compassion, to not only have the law in mind but also the weighty two words: the people."[24] The weighty significance of "the people" in ZHOU Shuqin's heart and her demonstrated practice of "justice for the people" are just a microcosm, a typical example of the contemporary Chinese concept of "rule of law for the people." This kind of rule of law, which upholds the principle of "justice for the people," is a rule of law that serves the people.

Respecting the people's creativity in the field of rule of law and advancing a rule of law that serves the people both embody the rule of law virtue principle of putting the people first. A rule of law upholding this principle can be summarized as "the people's rule of law."

III The Functional Orientation of the Rule of Law Toward National Governance

In the process of China's unique modernization, the promotion of modern legal system in China is actually an integral part of building a modern nation-state. Consequently, modern legal system has become an important symbol of modern China. The construction of a modern nation-state in China is a grand theme that cannot be separated from modern legal system and requires the improvement of national governance. In this context, it can

24 HUANG Hui, ZHOU Xiaoqing & HU Jiajia, 为乡村群众点燃法治明灯——记全国模范法官、江西贵溪市法院泗沥法庭庭长周淑琴 (Lighting the Beacon of the Rule of Law for Villagers: A Report of ZHOU Shuqin, a National Model Judge and President of Sili Court in Guixi City, Jiangxi Province), 法制日报 (*Legal Daily*), p. 3, Oct. 8, 2021.

be observed that "the capacity for national governance and the capacity for rule of law to a considerable extent overlap, the cause of national governance and the cause of rule of law to a considerable extent overlap, and the systems of national governance and rule of law to a considerable extent overlap."[25] In summary, rule of law and national governance have an intertwined relationship to a considerable degree, and the promotion of modern legal system in China signifies a profound transformation in national governance. From this perspective, the Chinese approach to the promotion of modern legal system inevitably chooses a role in national governance.

A | Characteristics of Modern Legal System: Applying the Rule of Law in National Governance

If we compare modern legal system in China with that of the West, we can find a subtle difference between them. Although both are products of the modernization of the rule of law, in the ideal vision of Western modern legal system, the focus is on "law." In Fuller's discussion on the eight elements of rule of law mentioned above, the first seven elements are about the provisions of "what the law should be" or "what the law should not be." For example, the law should be general, public, clear, free from internal contradictions, and stable, and it should not be retroactive or demand the impossible, among others. Among the eight elements, only the last one emphasizes the consistency between official actions and the published law, that is, the obedience of officials to the law. However, even this element can be interpreted as a requirement for officials to obey the law. Now, even if we step back and understand the last element as a demand placed on officials, at least the remaining seven elements are essentially about the regulation of the law itself. Through Fuller's description of the elements of modern legal system, we can infer that the promotion of Western modern legal system focuses on the law itself, and the promotion of rule of law is primarily the promotion of law. "What rule of law should be" is largely reduced to "what the law should be."

In English, the Chinese words of "法治 (*fazhi*)" is translated as "rule of law," which literally means "law-based governance." Since the law holds a position of authority, it implies that promoting the rule of law primarily focuses on promoting laws that meet the relevant expectations. This is the Western characteristic embedded in modern legal system in the West. In the process of modernizing rule of law in China, "what the law should be" is certainly important as well. Since the reform and opening up began in 1978, China has repeatedly emphasized the importance of well-conceived, democratic, and lawful legislation. Particularly in the past decade, improving the quality of legislation has been a widely recognized focus in the field of rule of law. However, even in an era that emphasizes the quality of legislation and aims to create good laws, the law itself is not the ultimate goal. The purpose of enacting good laws is to achieve good governance. The concept of "good laws and good

25 YU Zhong, 论中国法的精神 (*On the Spirit of China Law*), 陕西人民出版社 (Shaanxi People's Publishing House), at 65 (2019).

governance" ultimately comes down to the idea of "good governance."

One important characteristic of modern legal system in China is thus highlighted: The focus of rule of law is primarily on governance. In practice, when evaluating whether a law is good or not, an important criterion is whether it is effective or not. Even if a law has exquisite language, it is difficult to be considered a good law if it is not effective. However, the essence of whether a law is effective or not lies in its ability to achieve good governance and improve national governance. Therefore, it can be seen that the focus of modern legal system in China is directed towards national governance and the pursuit of "good governance in China."

Indeed, this role of rule of law in national governance is not only an option in modern legal system, but also a product inherited from excellent traditional Chinese legal culture. For example, in the late Qing Dynasty, WEI Yuan, a pioneer of progressive ideas, wrote his masterpiece Mogu, which is divided into two parts: Part 1 is Learning, and Part 2 is Governance. In the opening of the fourth section of the Governance, WEI Yuan said, "Treating the sick is to save lives, but it can also kill lives. Similarly, a ruler governs a state through laws, but laws can also be used to harm the state. It is not difficult to establish laws, but it is difficult to find individuals who can effectively enforce them. The laws of the Qing Dynasty on agriculture, which were introduced by HAN Qi and CHENG Boshi, two politicians of the Song Dynasty, would not have been oppressive to the people. The laws of the Zhou Dynasty, which were introduced by YANG Huo and RONG Yigong, two scholars of the Spring and Autumn period, would not have been violent."[26] These historical arguments are intended to show that law is a tool for governance and that the focus of rule of law is on governance. Furthermore, if we trace it back further, we can find that WEI Yuan's viewpoint actually originates from a long-standing cultural tradition. For example, in *XUN Zi*, it is stated that "Laws cannot stand alone, classes cannot govern themselves. They rely on people to survive or perish. Law is the end of governance, and the honored people are the origin of law. Therefore, if there are honored people, even if the law is simplified, it will be sufficient. Without honored people, even if the law is complete, it will lose the ability to respond to changes in circumstances, and it will be enough to cause chaos."[27] Although this sentence contains multiple aspects, it clearly indicates that governance is more important than law. In the book of *GUAN Zi*, it is stated that "If both the ruler and the people follow the law, it is regarded as good governance."[28] This argument suggests that the role of rule of law should be positioned in "good governance."

From GUAN Zi, XUN Zi, to WEI Yuan, their discourses indicate that the

26 WEI Yuan, 魏源集 (*The Collection of WEI Yuan*), edited and published by Zhonghua Book Company, 中华书局 (Zhonghua Book Company), at 45–46 (2009).

27 WANG Xianqian, 荀子集解 (*The Collection and Interpretation of XUN Zi Works*), edited by SHEN Xiaohuan & WANG Xingxian, 中华书局 (Zhonghua Book Company), at 226 (2012).

28 FANG Xuanling's note, LIU Ji's supplementary note, 管子 (*Guan Zi*), 上海古籍出版社 (Shanghai Classics Publishing House), at 314 (2015).

role of rule of law in national governance is not only a practical choice, but also rooted in a profound cultural tradition. It reflects the Chinese characteristics of modern legal system at the level of cultural tradition.

B | The Role of Rule of Law in National Governance from Historical Experience

If the role of rule of law in national governance can illustrate the characteristics of modern legal system, then why did the Chinese approach to modern rule of law choose such a role?

The role of rule of law having been playing in national governance and in "Chinese governance" is a response and support for modern state-building, but also a product of historical experience. The Resolution of the CPC Central Committee on the Major Achievements and Historical Experience of the Party over the Past Century points out that "When the rule of law prevails, the country will prosper, but should it weaken, the country will descend into chaos. Comprehensively advancing law-based governance is an essential requirement and important guarantee for socialism with Chinese characteristics; it is also a profound revolution in China's governance."[29] The "prosper" mentioned above refers to effective national governance or the manifestation of "peace and prosperity" in the state, which is the result of the flourishing of rule of law. On the other hand, "chaos" signifies the failure of national governance, and it is a negative consequence of the decline of rule of law. "Chaos" is a bitter fruit borne out of the decay of rule of law. The inherent relationship between the rise and fall of the rule of law and between the peace and chaos in a state is a conclusion drawn from a comprehensive analysis of historical experience.

Right after the end of the "Cultural Revolution," the Party stood at a crucial juncture for seeking the "great governance." DENG Xiaoping stated at the Central Working Conference on the eve of the Third Plenary Session of the Eleventh Central Committee: "We must strengthen the legal system. Democracy must be institutionalized and written into law."[30] The last article of Volume 3 of *Selected Works of DENG Xiaoping*, presents a famous statement from DENG Xiaoping: "We still need to rely on the legal system, which is more reliable."[31] This simple yet significant statement is derived from historical experience. It explains concisely why the Chinese approach to modern legal system in China focuses on the role of the rule of law in national governance. In short, for national governance and for the prevention of domestic turmoil, it is crucial to develop a legal system to advance modern legal system.

Over the past decades, from DENG Xiaoping's call to "strengthen the legal system" in 1978, to his statement in 1992 that

29 See fn. 8 at 6.

30 DENG Xiaoping, 解放思想, 实事求是, 团结一致向前看 (Freeing the Minds, Seeking Truth from Facts, Supporting a Forward-Looking Approach) (Dec. 13, 1978), in 邓小平文选 (*Selected Works of Deng Xiaoping*), Vol. 2, 人民出版社 (People's Publishing House), at 146 (1994).

31 DENG Xiaoping, 在武昌、深圳、珠海、上海等地的谈话要点 (Talking Points in Wuchang, Shenzhen, Zhuhai and Shanghai) (Jan. 18–Feb. 21, 1992), in 邓小平文选 (*Selected Works of DENG Xiaoping*), Vol. 3, 人民出版社 (People's Publishing House), at 379 (1993).

"we still need to rely on the legal system," and to the current comprehensive rule of law, there has been a prominent theme in China's modern legal construction. That is, to focus on national governance, improve national governance, achieve "good governance of Chinese characteristics," and promote profound transformation in national governance. In short, this role of rule of law is a choice largely based on the summary of historical experience and the lessons learned.

C | The Possibility of Modern Legal System in Improving National Governance

In terms of role, China's modern legal system is based on national governance and aims to improve it. So, how does China's modern legal system improve national governance? This can be analyzed from two different perspectives.

On one hand, the rule of law system ensures the systematic, normative, and coordinated nature of the national governance system. National governance involves numerous fields, levels, areas, and dimensions of national governance are intertwined. For example, promoting economic growth and improving the ecological environment both have their own specific objectives. Ensuring that these intertwined national governance activities are interconnected, mutually supportive, and mutually reinforcing, and preventing contradictions, conflicts, and counterproductive consequences between different areas, levels, and dimensions of national governance, is prerequisites and foundations for maintaining effective national governance and improving it. To establish such a foundation, the national governance must form a national governance system, and within this system, coordination among various subsystems must be maintained. In the face of such demands, the modern legal system in China can emerge and develop in response to the times and meet the inherent needs of the national governance system for systematicness, normativeness, and coordination. This is because the advance of Modern legal system in China aims to establish a specific system, namely the socialist rule of law system with Chinese characteristics. Largely, this rule of law system is the result of institutionalizing and legalizing the national governance system and can respond to the needs of the national governance system in various fields, levels, and dimensions. Through the systematic advance of Modern legal system in China, the systematic, normative, and coordinated nature of the national governance system can be ensured.

On the other hand, the rule of law consensus is used to foster social consensus. National governance has a crucial objective, which is to achieve social integration. Social integration refers to the coordination and resolution of conflicts and disputes among various members of a social community. If a social community had no integration, the contradictions between various members would become sharper, leading to social unrest. Intense social unrest is essentially a sign of ineffective and failed national governance. To avoid ineffective or failed national governance, social integration

must be strengthened. However, in the process of modernization, social progress and development will inevitably lead to an expansion of the space for choice, and social diversification becomes an inevitable trend. The essence of social diversification lies in the diversification of interests and values. Different parts or groups within a social community inevitably form divergences, conflicts, and even confrontations due to different interests or value positions. In order to address this potential possibility, the national governance system must create a basic platform to foster social consensus, so as to seek the minimum social consensus on this platform. The diverse, conflicting, and even conflicting parties can engage in negotiations through this basic platform, thereby resolving social conflicts, preventing social conflicts, and maintaining social order. So, what is the basic platform or carrier that can effectively foster social consensus? The answer is the modern legal system. Because the rule of law can constrain all parts and groups within a social community. Problem-solving under the rule of law is acceptable to any group or individual. Therefore, the rule of law consensus is the basic platform for fostering social consensus and, certainly, the basic platform for improving national governance. In the national governance system, the role of this basic platform possessed by the rule of law also reflects the fundamental, stable, and long-term role of the rule of law.

Since the modern legal system can fundamentally improve national governance, the promotion of modern legal system in China embodies a profound revolution in national governance, and the role of the rule of law in national governance has become a fundamental option in the promotion plan of modern legal system in China.

IV The Legal-Historical Consciousness of Inheriting Excellent Traditional Chinese Legal Culture

In the Chinese plan for the promotion of modern legal system, there is also a legal-historical consciousness that inherits the excellent traditional Chinese legal culture. This legal-historical consciousness mainly manifests as the creative transformation, innovative development, and integration of the excellent traditional Chinese legal culture into the modern legal system. Based on the changes throughout history, it can be observed that the modern legal system in China, emerging within the process of Chinese modernization, cannot be separated from China's history and tradition. The characteristics of Chinese modernization of the rule of law are, to a large extent, derived from the excellent traditional Chinese legal culture. Without the fine traditional Chinese legal culture, China's modern legal system could not have developed its own characteristics, and the Chinese plan for the promotion of modern legal system would have been like water without a source or a tree without roots. Therefore, the legal-historical consciousness that inherits the fine traditional Chinese legal culture becomes an important option in the plan for the promotion of modern legal system.

A | Rule of Law Self-Awareness of Legal-Historical Consciousness

In the spectrum of legal theories, it is difficult to identify which school of legal theory is completely devoid of historical consciousness. Any legal theory that has had a certain influence is more or less connected to history because history is a source of innovation. For instance, John Locke's *Two Treatises of Government* aimed to provide theoretical basis for capitalist rule of law after the bourgeois revolution. However, the core content of the first part of *Two Treatises of Government* was critical of the outdated theory of "Divine Right of Kings." Based on this criticism, Locke wrote the second part of *Two Treatises of Government* to expound the social contract theory that was oriented toward the era and the future. Therefore, Locke's masterpiece, *Two Treatises of Government*, also contains a historical consciousness that is worth exploring.

Although historical consciousness is the greatest common divisor among various legal theories, the level of historical consciousness exhibited by different legal theories varies in strength. Comparatively, among the various modern and contemporary legal theories that emerged in the process of rule of law modernization in different countries, the school with the strongest historical consciousness should be the German Historical Law School. Since this school was named after "historical law," it has formed a rule of law self-awareness of legal-historical consciousness. In his *Philosophical Manifesto of the Historical Law School*, Karl Marx criticized the historical law school, saying that "The historical school has turned the study of origins into its own slogan, taking its fascination with origins to the extreme."[32] Following Karl Marx's criticism (detailed below), we can logically conclude that the historical law school has internalized historical consciousness into its own theory self-awareness.

Although the historical law school's legal-historical consciousness can be traced back to Hugo Grotius, yet its most representative figure is Savigny. In the early 19th century, there was a significant disagreement within the German legal community on how to establish a unified civil code for Germany. Savigny believed that it was necessary to inherit the inherent cultural traditions of Germany. He studied the origins of positive law and stated, "In the earliest ages of human history, law already possessed its own distinct characteristics, specific to certain nation, just like its language, code of conduct, and basic social organization."[33] The law, legal studies, and rule of law of a nation, like its language, always reside within the historical traditions of that nation. Whether it is the formulation of a civil code or the advance of modern legal system, it must be connected to history. Because, "Only through history can a vivid connection be maintained with the initial state of a nation, and losing this connection means losing the most precious part of a nation's spiritual life. Therefore,

32 See Marx & Engels, fn. 17 at 97.

33 Friedrich Carl Savigny, 论立法与法学的当代使命 (*On the Contemporary Mission of Legislation and Law*), translated by XU Zhangrun, 中国法制出版社 (China Legal Publishing House), at 7 (2001).

according to this theory, it is through history that 'the common law' and local laws of various nations become truly useful and irrefutable authorities. This is the rigorous historical method of legal studies."[34]

Friedrich Carl Savigny's self-claimed "rigorous historical method of legal studies" demonstrates that the law school he represents has developed a high level of theory consciousness and confidence in the legal-historical consciousness. Although the historical law school's legal-historical consciousness originated in 19th-century Germany and focused on inheriting the traditional legal culture of Germany, it has universal impact in legal theories. It provides a valuable reference for China's modern legal system to inherit the excellent traditional Chinese legal culture. Furthermore, it offers valuable experience for the transformation and application of legal-historical consciousness in law-based governance.

B | Inheriting the Fine Traditional Chinese Legal Culture in Modernizing the Rule of Law in China

In the process of promoting modern legal system in China, the conscious inheritance of excellent traditional Chinese legal culture is both a prominent feature and a fundamental experience of the Chinese modernization of the rule of law. We can examine the inheritance of excellent traditional Chinese legal culture in modern Chinese rule of law from two perspectives.

From one perspective of excellent traditional Chinese legal culture, cultural elements of Confucianism, Legalism, Taoism, and Mohism all have been inherited in the advance of modern legal system in China. For example, the preference for "no litigation" in Confucianism has been transformed and integrated into the contemporary "Fengqiao Model," which started in the 1960s in Fengqiao Town of Zhejiang Province, where most local contradictions are resolved locally, thus creating a scenario of fewer arrests and better social ethos, receiving high praise from Chairman MAO Zedong. The emphasis on "governance by law" in Legalism also resonates with the concept of rule of law in contemporary China. The Daoist criticism of the law alienation and the contemporary modesty principle in criminal law also have latent connections at the cultural level.

Let us take a look at Mohism. Although its relationship with Modern legal system in China has not received widespread attention in academia, some of Mohism's propositions have subtly influenced modern Chinese rule of law. For example, Mohism opposes extravagant burials and advocates frugality, and this concept is reflected in Article 10, Clause 2 of the Chinese Constitution: "The state practices thrift and opposes extravaganza." For example, at the beginning of the book *MO Zi*, MO Zi asks, "Today, rulers and nobles aspire to bring prosperity to the state, increase the population, and establish good governance. However, instead of achieving wealth, they encounter poverty. Instead of a growing population, they face a decline; instead of good governance, they experience chaos. All this indicates their failure to

34 Id. at 87.

achieve what they desire. What is the reason behind this?" Despite the desire of rulers and nobles to make the country prosperous, increase the population, and achieve good governance, why is this goal not realized? MO Zi's answer is, "The reason is that those rulers and nobles are unable to prioritize the selection of virtuous and capable individuals for governance. Therefore, if there are many virtuous and talented people in the country, the governance will be effective. If there are few virtuous and talented people, the governance will be weak. Hence, the essential task of rulers and nobles is to esteem the talent."[35] In short, the main reason is that those in power are not good at discovering and utilizing talents, failing to leverage the support of virtuous and capable individuals in achieving effective governance. Therefore, the crucial task for those in power is to esteem and gather sufficient numbers of virtuous and talented individuals for the country. Applying this principle to the present day implies that in order to promote modern legal system and improve state governance, it is necessary to cultivate a high-quality legal team that possesses both moral integrity and professional competence.

On the other hand, from the perspective of modern legal system promotion, if we divide the modern legal system into three levels: ideology, institutions, and techniques, then the inheritance of excellent traditional Chinese legal culture is reflected in each level of modern legal system promotion. Harmony is an important value element in the value ideology level of modern legal system in China. However, harmony is also an inherent concept in China's excellent traditional legal culture. For example, the 25th chapter of LAO Zi's *Dao De Jing* states, "Humanity follows the Earth, the Earth follows Heaven, Heaven follows the Dao, and the Dao follows nature," which reflects the harmony of the relationship between heaven and humanity. "In the ancient concept, spring and summer are the seasons of nurturing and growth, while autumn and winter are the seasons of hibernation and withering. This is the unchanging natural order in the universe, and no object in the universe can violate this rule. In order to coordinate and adapt to the natural order, human behavior, especially political behavior, must align with the four seasons and correspond to the will of heaven."[36] The concept of such "correspondence" and "coordination and adaptation" with the natural order reflects the harmony of the relationship between heaven and humanity.[37]

At the institutional level of modern legal system in China, attention is given to combining the rule of law with the rule of virtue. This institutional factor in the modern legal system can be traced back to the principle advocated by ZHOU Gong, a prominent figure in the early Western Zhou Dynasty, known as "enlightened virtue and cautious punishment." Regarding the

35 FANG Yong, 墨子译注 (*Interpretations and Notes to MO Zi*), 中华书局 (Zhonghua Book Company), at 49 (2011).

36 QU Tongzu, 中国法律与中国社会 (*Law and Society in Traditional China*), 商务印书馆 (The Commercial Press), at 300 (2015).

37 It is worth noting that the distinction between heaven and man is also the theme of China's history of Confucianism. For details, see SHEN Shunfu, 天人之辨与中国儒家思想史的主题 (The Distinction Between Heaven and Man and the Theme of China's Confucianism History), 2 管子学刊 (*Guan Zi Journal*), 30–42 (2022).

concept of "enlightened virtue," the *Book of Documents* records a requirement proposed by ZHOU Gong, "The king should use his virtue and pray to heaven for eternal life." This statement means, "Enlightened virtue should be the foundation for eternal governance. Future kings should not rely solely on the mandate of heaven entrusted to the previous kings, but should be cautious and diligent in upholding it."[38]

At the technical level of operation in the modern legal system in China, the content is extremely rich. For example, the process of "reasoning" or "argumentation" in judicial proceedings can be attributed to the technical operation of rule of law. However, such rule of law techniques are documented in ancient legal literature such as the "Collection of Clear and Bright Judgments by Famous Officials." Another example is the emphasis on "co-governance" or "comprehensive governance" in the modern legal system in China, which has its roots in early traditional China. If we pay attention to the relevant descriptions in the *Book of Documents*, we can see that the early stage of "co-governance" or "comprehensive governance" had already emerged during the era of Emperor Yao and Emperor Shun over 4000 years ago. According to the *Book of Documents*, GAO Tao's vision for national governance was, "Heaven has established norms, commanding me with five norms and five virtues. Heaven has ranked with rituals, and I have five rituals to maintain harmony. With the unity and respect of peers, harmony is achieved. Heaven has bestowed virtue, and I have five regulations for the five types of clothing. Heaven punishes the guilty, and I have five punishments for the five offenses." In this framework, the norms relied upon to achieve "co-governance" or "comprehensive governance" mainly include "norms, rituals, virtues, and punishments." This operational technique of "co-governance" or "comprehensive governance" underwent continuous evolution over the thousands of years following GAO Tao's time. In different eras, although the expressions and practices of "co-governance" or "comprehensive governance" have varied, they all emphasize the comprehensive use of various norms and means to improve national governance and promote a harmonious and civilized order.

C | Advancing Modern Legal System by Combining the Basic Marxism Principles and Excellent Traditional Chinese Culture

For decades, inheriting the legal-historical consciousness of excellent traditional Chinese legal culture has become an important option in the promotion of modern legal system in China. While acknowledging this option, it is also important to recognize that inheriting excellent traditional Chinese legal culture needs to be combined with Marxism. With the guidance of Marxism, China's modern legal system can be advanced by combining the basic principles of Marxism and excellent traditional Chinese culture, thereby achieving Chinese modernization of the rule of law.

The basic principles of Marxism

38 FU Sinian, 傅斯年史学论著 (*FU Sinian Work on History*), 上海书店出版社 (Shanghai Bookstore Publishing House), at 376 (2014).

already have a strong historical consciousness. Although, as mentioned above, early Marx criticized the historical law school, his criticism mainly targeted the old system advocated by Grotius Hugo and Savigny. In his later years, Marx devoted a lot of energy to the study of human origins. It is known that after Marx's death, "Engels, when organizing Marx's manuscripts, discovered detailed summaries, comments, and supplementary materials on Lewis H. Morgan's book *Ancient Society from 1880–1881* (see Volume 45 of the Chinese edition of Complete Works of Marx and Engels). Engels was convinced that this book by Morgan confirmed the conclusions of Marx and his own research on historical materialism. Therefore, he believed it was necessary to use these materials to write a dedicated work."[39] This was the motivation behind Engels' creation of *The Origin of the Family, Private Property and the State*. This work, initiated by Marx in his later years and ultimately completed by Engels, can be regarded as the "Genesis" of Marxism.[40] The strong emphasis on the origin of the state and law contained in it reflects the historical consciousness of Marxism.

"The Speech at the Grave of Marx" is a renowned masterpiece that Engels left to future generations. In this "speech," Engels summarized Marx's "two discoveries," with the first being "The discovery of the law of the development of human history, which is a simple fact that has always been obscured by abundant and intricate ideologies: People must first eat, drink, have shelter and clothing before they can engage in politics, science, art, religion, and so on. Thus, the direct production of the material means of livelihood, and therefore a certain stage of economic development of a nation or an era, constitutes the foundation upon which people's systems of government, concepts of law, art, and even religious beliefs develop."[41] This passage succinctly captures the historical materialism established by the classical writers of Marxism. This "materialism" modified by "history" also signifies the historical consciousness of Marxism.

It is precisely because Marxism embodies a strong historical consciousness that Lukács wrote in the preface of the 1922 edition of his seminal work *History and Class Consciousness*, "The basic conviction of this book is to correctly understand the essence of Marx's method and to apply it correctly." He further stated, "In Marx's theory and method, the correct method of understanding society and history has been finally discovered. This method is essentially historical in its most intrinsic nature."[42] Lukács' summary of this method has long been the conscious choice for the CPC in the process of

39 Karl Marx & Friedrich Engels, 马克思恩格斯文集 (*Collected Works of Marx and Engels*), Vol. 4, 人民出版社 (People's Publishing House), at 572–573 (2009).

40 YU Zhong, 法理四篇 (*Four Articles on Jurisprudence*), 中国法制出版社 (China Legal Publishing House), at 1 (2020).

41 Karl Marx & Friedrich Engels, 马克思恩格斯选集 (*Collected Works of Marx and Engels*), Vol. 3, 人民出版社 (People's Publishing House), at 574 (1972).

42 Lukács, 历史与阶级意识——关于马克思主义辩证法的研究 (*History and Class Consciousness: A Study of Marxist Dialectics*), translated by DU Zhangzhi, REN Li & YAN Hongyuan, 商务印书馆 (The Commercial Press), at 41 (1992).

adapting Marxism to China's context. For example, as early as 1938, MAO Zedong wrote in his article "The Position of the CPC in the National War," "Another task of our study is to learn from our historical heritage and critically summarize it with the methods of Marxism. Our nation has a history of thousands of years, with its own characteristics and many precious treasures. In regards to these, we are still elementary students. Today's China is a development of historical China; we are Marxist historicists, and we should not sever history. From Confucius to Sun Yat-sen, we should summarize and inherit this precious heritage."[43] It is under the guidance of Marxism's historical method and in the integration of the basic principles of Marxism with excellent traditional Chinese culture that the Chinese approach to modern legal system promotion has chosen to inherit the legal-historical consciousness from Chinese traditional legal culture, thus initiating the process of promoting modern legal system in China.

From a practical perspective, the promotion of modern legal system in China cannot be separated from a modern legal system, and this modern legal system must be guided by the Constitution. However, even at the forefront of the Chinese constitution text, namely in the Preamble, a strong legal-historical consciousness is evident. Specifically, "The first paragraph of the Preamble of Chinese Constitution, along with the following six paragraphs, mainly discusses Chinese history. These narratives or 'historical paragraphs' about China exhibit three characteristics. First, there is a focus on recent history rather than ancient history. Secondly, there is a narrative of China facing the world." Lastly, there is a historical regularity supported by the 'four major events.'"[44] The Preamble of Chinese Constitution, as the starting point of the contemporary Chinese legal system, is a document that embodies localized Marxism in China. It is also a modern legal system document formed through the integration of the basic principles of Marxism with excellent traditional Chinese culture. Intuitively and vividly, the Preamble interprets the legal-historical consciousness in inheriting the excellent traditional Chinese legal culture and its position in the Chinese approach to modern legal system.

V Conclusion

The sections above describe the Chinese approach to modern legal system in China from various elements, including elaborations on the centralized and unified leadership of the Party Central Committee in the rule of law, on the rule of law virtue principle of putting the people first, on the role of the rule of law in national governance, and on the legal-historical consciousness of inheriting excellent traditional Chinese legal culture. It also highlights the Chinese characteristics, experiences, and

43 MAO Zedong, 中国共产党在民族争战中的地位 (The Position of the CPC in the National War), in 毛泽东选集 (*Selected Works of MAO Zedong*), Vol. 2, 人民出版社 (People's Publishing House), at 533–534 (1991).

44 See YU, fn. 44 at 177–179.

fundamental elements of modernizing the rule of law in China.

To fully understand the Chinese approach to modern legal system, two additional points should be considered from a broader perspective. Firstly, the Chinese approach to modern legal system is a choice made by the CPC and the Chinese people in their century-long historical process of struggle. It is not only a product of history but also of practical experience. As a comprehensive plan for promoting a modern legal system, it has undergone a continuous process of exploration, improvement, and maturation in practice. Secondly, the Chinese approach to modern legal system is a component of the overall plan for Chinese modernization, and it is intertwined with other components of the Chinese modernization process. In addition, it has a clear and strong political attribute because there is always a political dimension behind any form of rule of law. The rule of law is not only inseparable from politics but also from the economy, society, culture, and ecology. It is equally intertwined with industries, agriculture, national defense, and technology. From this perspective, the Chinese approach to the rule of law modernization is embedded in the overall process of Chinese modernization.