

# **Research Series on the Chinese Dream and China's Development Path**

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Quanxi Gao • Wei Zhang • Feilong Tian

# The Road to the Rule of Law in Modern China



 Springer

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## Series Preface

Since China's reform and opening began in 1978, the country has come a long way on the path of Socialism with Chinese Characteristics, under the leadership of the Communist Party of China. Over 30 years of reform efforts and sustained spectacular economic growth have turned China into the world's second largest economy, and wrought many profound changes in the Chinese society. These historically significant developments have been garnering increasing attention from scholars, governments and the general public alike around the world since the 1990s, when the newest wave of China studies began to gather steam. Some of the hottest topics have included the so-called "China miracle", "Chinese phenomenon", "Chinese experience", "Chinese path" and the "Chinese model". Homegrown researchers have soon followed suit. Already hugely productive, this vibrant field is putting out a large number of books each year, with Social Sciences Academic Press alone having published hundreds of titles on a wide range of subjects.

Because most of these books have been written and published in Chinese, however, readership has been limited outside China – even among many who study China – for whom English is still the lingua franca. This language barrier has been an impediment to efforts by academia, business communities and policy-makers in other countries to form a thorough understanding of contemporary China, of what is distinct about China's past and present may mean not only for her future but also for the future of the world. The need to remove such an impediment is both real and urgent, and the *Research Series on the Chinese Dream and China's Development Path* is my answer to the call.

This series features some of the most notable achievements from the last 20 years by scholars in China in a variety of research topics related to reform and opening. They include both theoretical explorations and empirical studies, and cover economy, society, politics, law, culture and ecology, the six areas in which reform and opening policies have had the deepest impact and farthest-reaching consequences for the country. Authors for the series have also tried to articulate their visions of the "Chinese Dream" and how the country can realize it in these fields and beyond.

All of the editors and authors for the *Research Series on the Chinese Dream and China's Development Path* are both longtime students of reform and opening and

recognized authorities in their respective academic fields. Their credentials and expertise lend credibility to these books, each of which having been subject to a rigorous peer-review process for inclusion in the series. As part of the Reform and Development Program under the State Administration of Press, Publication, Radio, Film and Television of the People's Republic of China, the series is published by Springer, a Germany-based academic publisher of international repute, and distributed overseas. I am confident that it will help fill a lacuna in studies of China in the era of reform and opening.

Xie Shouguang

## Preface

There are many reasons that the Opium War in 1840 was chosen to be the starting point of China's modern history. The encounter of the East and the West set off such fundamental changes that Qing Dynasty reformist minister Li Hongzhang exclaimed (they) "hadn't been seen for three thousand years". The war ushered in a period that, in the Chinese collective consciousness, is associated with military defeats, land cessions, war reparations, and humiliating treaties. The staggering cost both in the form of human lives and territorial loss inflicted a deadly blow to the old, ailing empire. While it opened the eyes of ignorant Manchu rulers to the fact that China was not a "heavenly kingdom and superior country", it also left a searing scar in the minds of the common Chinese people, for whom, the prospect of their country being turned into a Western colony would henceforth be a constant nightmare. Determined to thwart fate, the elites of the Chinese people strived to institute one after another reforms. In the process, ideas were conceived and social experiments were carried out, with the utmost goal being transforming China into a strong modern state – a theme that would recur in the subsequent 170 years. Even today, this transformation is still in progress and we are standing in the middle of a journey of national self-redemption and rejuvenation. Born out of the need of self-preservation, such a hardship-ridden journey, leads towards integration of the unique Chinese civilization into the world order, a feat that will be accomplished with much creativity and self-adaption.

Rather than a natural continuation of its traditional form, China that undertook changes "unseen for three thousand years" should be viewed in the context of the unprecedented transformation which turned the country from a classical society into a modern one. This is also the reason why the late Qing dynasty reformists were in a situation very different from their predecessors. In history, China had seen several reforms that set off immense changes: Shang Yang's Reform, Northern Wei Reform, Wang Anshi's Reform and Zhang Juzheng's Reform, to name a few. In a broader sense, Confucius' authoring of *Spring and Autumn Annals* and Deng Zhongshu's reinterpretation of Confucianism can also be viewed as reforms in view of their social implications. However, the reforms that we are talking about are distinctly

different, both in terms of thoroughness, unprecedentedness and the influence they exerted on China's over a century-long modernization.

Since the Opium War, especially the First Sino-Japanese War, China had become integrated into the world order so that it could no longer be regarded as the organic, self-developed classical society that it once was. Thus it would be wrong to view the near-modern Chinese history as another dynastic cycle, or a phase of spontaneous development rooted in China's own culture and tradition. The social changes, as the Chinese thinkers of the day such as Li Hongzhang realized back in the day, were indeed "unseen for three thousand years". In response to the changes, a new consciousness, as a result of increasing exposure to the Western influence, took shape. It would spur China to adopt Western notions and institutions. Succession of dynasties had become a thing of the past; the rigid sinocentric world order that places an irrevocable distinction between *Hua* and *Yi* (Translator's note: The Central Kingdom and Barbarians) was rendered obsolete. Desperate situation demanded desperate measures – to save the nation from the onslaught of the West, China was sent onto a route of reform that would span the next century, a time when turbulence coexisted with transformation, opportunity arose from crisis, death followed by rebirth.

Worldwide, China's modernization is rather special in the sense that other nations descended from the great ancient civilizations such as Ancient Greece, Rome, Egypt and India had all but perished by the modern time, whereas the Chinese was the only one that preserved a civilization of over three thousand years long. However, this historical bequeathal cut both ways – for one thing, it made China's transformation towards modernity fraught with setbacks and stagnations. Yet with the national survival at stake, there was no other choice but to cut off the past, to reshape its spirit, to replenish its energy, and fight for survival – which is the logic that has dominated China's modernization. Commenting on this period of history, later day historian Yeo-Chi King said "China's order of civilization faced unprecedented challenge in the mid-nineteenth century. This challenge came from the modern Western civilization that came in front of China and other eastern Asian countries in the form of imperialism and colonialism. People like Li Hongzhang and Yan Fu were aware that China was in the throes of the greatest transformation since Qin Dynasty... to put it simply, it is about how China responded to the provocation from the West, its conception of modernization, as well as renewing and developing its own traditional civilization."<sup>1</sup>

For China, the word 'modernity' has three layers of meanings. The first mainly concerns with instrumental aspects and material conditions, i.e. living standards, means of production, etc. These constitute the most basic or technological layer of modernization. Following the Opium Wars, the best Chinese thinkers began to realize that China must modernize itself to survive as a civilization; they had henceforth engaged in efforts to institute reforms to promote the modernization. Examples of the early-stage modernization efforts include coastal defense plan composed by

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<sup>1</sup> See Yeo-Chi King: *Construction of China's Modern Civilization – On China's Modernization and Modernity*, part of *Economic Democracy and Economic Liberty* edited by Liu Junning, Shanghai Sanlian Bookstore Press, 1998, Pp. 42–43.

Wei Yuan, the Westernization Movement to build a “strong” and “prosperous” country, Sun Yat-sen’s *Strategy of State Building*, Mao Zedong and CPC’s “Overtake Britain and America” Movement, and the Four Modernizations Campaign, Building Well-off Society Campaign in the late twentieth century. Underlying these phenomena, there is a strong consensus – that China must be turned into a modern state. This rather elementary understanding of modernity has been a major driving force throughout a century of modernization.<sup>2</sup>

On top of the basic layer, there are notions, values, perceptions, as well as intellectual debates that formed public opinion and social values. While the public had relatively little problem accepting the instrumental modernization, modern social values and notions proved to be a hard sell. The Chinese people’s reluctance to forsake their values and embrace Western ones is reflected in the popular notion “Zhong Ti Xi Yong” (Translator’s note: Chinese foundation and Western practical application). Another example is the recent debates concerning the merit and demerit of the American development model vis-a-vis the Chinese one. Such a divide among the public would contribute to a concatenation of historical events, with outcomes not always desirable. The Chinese thinkers of the day were well aware of the divergence. Examples can be found in debates over the Confucian dichotomy of Hua and Yi, Wei Yuan’s writings on maritime sovereignty, Westernization Movement, Constitutionalist Movement, Hundred Days Reform, May 4 Movement, Xinhai Revolution, the Soviet-style Communist Revolution, as well as Socialism Construction that spanned over 60 years. These events raised questions that not only concern the technological, but also the conceptual. In fact, one of the central questions this book will try to answer is why the strong consensus and remarkable progress in terms of the instrumental did not happen when it came to the conceptual.<sup>3</sup>

The answer lies in China’s own tradition – the third layer. Modernity, a concept deep-rooted in the Western tradition, was wedded to Western cultural institutions. They were inseparable with nation states, capitalism, and commercialism, and some significant historical events such as Industrial Revolution, technological revolutions and reforms of Christianity had all left deep marks. Although over the course of 300 years, the Western modernization experienced many setbacks in its own right, the problems they experienced, unlike ones faced by China, are ingrained in their own culture, hence despite the setbacks, modernity always triumphed and renewed

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<sup>2</sup>To read more about the distinction between modernization and modernity, see Qin Xiao’s *Contemporary China: Modernization or Modernity*, Social Science Academic Press, 2009; *On China’s Modernity Solution* by the same author, Social Science Academic Press, 2010. The modernist concept of material progress deeply influenced China’s choice of its economy model (such as prioritizing development of heavy industry in post-1949 era) and its constitutional spirit (build a “prosperous and strong” state). In terms of the former, read Lin Yifu’s *China Miracle: Development Strategy and Economic Reform*, especially the second chapter, Shanghai People’s Press, 1999; the later, see Chen Duanhong’s *On Constitution as the Basic Law and Advanced Law*, Beijing University Law Journal, Issue 4, 2008.

<sup>3</sup>See Tang Degang’s *70 Years of Late Qing (I): A Review of China’s Social Culture Transformation*, Yuanliu Publishing House, 2003.

itself – as a result, we see that modernity in the West has in many ways been transformed into post-modernity.

Things are different for China. Not only it had a late start, modernity being a product of a foreign civilization, it was borrowed, imposed as a result of its association with the West and many characteristics indicate China's modernization was a passive response to external provocations. For the Western civilization, from its inception until the twentieth century, modernity had gone through a process of transformation. All institutions and values, such as constitutional monarchism, sovereignty, individual liberties, representation democracy, free will, conception of order and civilization, the relationship between state and citizens, between human beings and nature, between politics and religion, had all be changed drastically. In the twentieth century, a new development emerged – post-modernism emerged as a counteraction to modernism. All the crises notwithstanding, we should see that the modernization in the West is rather spontaneous and logically coherent, while the same cannot be said for China.

Given the “provocation-response” nature of the Chinese-Western interaction, it seems only natural that the concept of modernity, rooted in the Western tradition, did not resonate with its Chinese audience. As a latecomer, China's modernization needed more than importing Western technology, ideals such as “science and democracy”, capitalism, socialism, justice, liberty, rule of law, etc. It was critical for China to decide what kind of modernization it wanted, and to do what in different time, in what fashion. Unfortunately, during the century-long modernization, we saw little cool-headed, self-reflective thinking in this regard. This inadequacy has much to do with the reality that today, a healthy and stable modernity has yet been fully implemented. In fact, revolution and radicalism were chosen at multiple historical crossroads and dominated China's modern history. Such a pattern is quite obvious throughout the history.

Let's begin with a review Hundred Days Reform. At the first glance, the theory Kang Youwei and Liang Qichao advocated seems to be a new development of the traditional Confucianism with a bent on political innovation and reform. However, upon a closer look, it became plain that Kang and Liang's new theory differs greatly from traditional Confucianism in meaningful ways. Most importantly, some of the central ideas were borrowed from the West. Not only their inspiration for the reform was derived from the Western civilization, their endeavor to reinterpret Confucian doctrines is essentially “disguising” Western revolutionary radicalism as Chinese Confucianism. In doing so, Kang expressed his vision and aspirations regarding modernity. In fact, the whole reform can be regarded as an expression of the Chinese civilization's aspirations to renew itself under the pressure of survival. Almost the same took place in Japan, which inspired Fukuzawa to put forward his “Leave Asia and Join Europe” theory – Asia refers to the Chinese tradition, while Europe stands for Western civilization and modernity. Therefore the Hundred Days Reform should be regarded as a manifestation of which way should China pursue – the traditional Chinese way or the modern Western way. The same question was later put in front of Sun Yat-sen and the communist revolutionaries after him. These revolutions might have differed from the Hundred Days Reform, but they shared the same

radicalism – all insisting that a modern China can only be brought about after the old one was destroyed.

But why did China showed a strong preference for revolutionary radicalism to milder alternatives? Of course, there was the great national bitterness as a result of the Western subjugation. When ancient Chinese civilization was confronted by the Western powers, when the very question of its cultural survival was at stake, little wonder that the Chinese elites, aware of the gravity of the situation back in the day, opted for extreme means compelled by the belief that such measures were the most effective. Many of them sincerely believed that only through radical measures, a fate of subjugation and slavery could be thwarted; they also believed that China's problems could be solved at one stroke. Driven by such a view, they endeavored to lift China's international status, trying to help China to deal with the West on equal terms. Given the intensity of sentiment and urgency, it was done with great haste. Yet with the benefit of hindsight, we know that despite all the bloodshed, regime changes, and tyrannies, and over century-long modernization, a healthy and civilized state remained unaccomplished. One may argue that today China has emerged as a world power, but one should not overlook the costs paid for it – individual dignity, liberty, traditional virtues and morality, all having been sacrificed to some extents. Ever since the May 4 Movement, radicalism attained mainstream recognition with the public who grew increasingly fed up with anything traditional. Such sentiment heightened during the Tutelage Era, and later the Cultural Revolution. Even today, the specter of radicalism has not gone yet. In spite of the long process of modernization, a sound legal and moral order to provide better justice and moral guidance for the modern Chinese people has yet been established.

We need to look beyond the national bitterness and contemplate why this form of modernity was chosen and why did this form of modernity that we chose degrade, mutate and finally led to undesirable outcome. Is revolutionary radicalism the only way to achieve it worldwide? During the 170 years, is revolutionary radicalism the only driving force? Or were there any other that were overlooked or suppressed, yet nonetheless vital and legitimate? To put it simply: During four centuries of Western modernization and over one century of Chinese modernization, is revolutionary radicalism the only solution? Is revolutionary radicalism the only source of legitimacy for our society and institutions? The answer is obviously negative.

In fact, in the Western society, revolutionary radicalism is only one alternative, and has been proven to be a “twisted” one. Conservatism, which opposes revolution and radicalism, remains mainstream. Worldwide, modernity has two different traditions: the Anglo-American rationalist and gradualist approach, whose principles shaped the Britain and United States, two bases of conservatism. Without their steadfast championing of conservatism principles, which have been the guiding values since the seventeenth century, the world order as we know it today would have been inconceivable.

There is no denying that even within the tradition of conservatism, revolution sometimes could not be avoided. England, for example, had Glorious Revolution, while the United States had American Revolution, yet overall, these conservative revolutions differed from the radical ones – they are more restrained and their

contradictions were resolved within the political institutions; highly critical of themselves, these revolutions sought to terminate themselves as the ultimate goal. We call such trait revolutionary counter-revolution, which leads to a revolution ending with revolutionary principles written into the constitution, thereby achieving peace and constitutionalism, as happened in England and America. Here we can see that what conservatism conserves is not the old feudalist institutions, but revolutionary values. With conservatism, ravages of revolution were contained, a stable state with sound legal system emerges in its wake, whereas in a radical revolution, such outcome is often unattainable. This does not mean, however, these conservative societies have difficulty in renewing or improving themselves; on the contrary, renewal and improvement were deeply ingrained in conservative constitutionalism tradition, and played a critical role in their social progress. So the difference between the two is whether the extreme radical means can be restrained. In case of conservative constitutionalism, revolutionary means would be put in cold storage once the revolution succeeded and counter-revolution will take over to complete the transformation from extreme political condition to an everyday one.<sup>4</sup>

The revolutionary radicalism tradition stemmed from the French Revolution, further developed through the later German Revolution and Russian Revolution. This route to modernity lays its emphasis on constant destruction of old institutions. It posited that only through destruction of the old can the new be established. What it overlooked is the dialectics that new will become old, hence will also need to be get rid of one day. Without a brake, which a conservative revolution can provide, destruction cannot be stopped until complete annihilation. In such a process, even the ideals the revolution once upheld will be reduced to what Strauss called “nothingness”. Hence we should see that “construction through destruction” is a form of sophistry. Destruction is destruction; it does not necessarily entail construction. No peaceful modern society was constructed according to this pattern. Fortunately, radicalism is just one option in the West and never gained mainstream recognition. Although at certain points, its influence was strong enough to contend with conservatism – the French – Russian tradition could not compete with the conservationist Anglo–American tradition in terms of effectiveness in constructing a stable social order. However, even today, the two contradicting tendencies still coexist in Western conservatism, resulting in paradoxical contradiction between the pacifist ideals championed by the British and American constitutions and their imperialist hegemony designs.

China as a latecomer, faced problems very different than the Western countries did centuries ago. In China, conservatism and conservatives had weak legitimacy from the beginning. Radicalism was the dominating force throughout much of the

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<sup>4</sup>For more about political and constitutional jurisprudent analysis of Revolutionary Jurisprudence and Counterrevolutionary Jurisprudence, read Gao Quanxi’s *On Revolutionary Jurisprudence*, Beijing Post-graduate Journal, Issue 1, 2010; *The Secret of American Politics—Reviews From the Perspective of Political Philosophy*, Strategy and Management, Issue 5 and 6, 2010; *Revolution, Constitution and China Constitutionalism*, Beijing University Law Journal, Issue 2, 2010, Beijing University Press.

modern history. This is compounded by China's choices at some historical crossroads, which, to a good measure, prevented China from building a healthier and more rational form of modern society in line with conservatism. On the other hand, China's modern history is not completely devoid of the influence of conservatism. One can say that the influence of conservatism was weaker, but it remained alive and resilient, and even during the worse times was not absent.<sup>5</sup>

Since conservatism focuses more on incremental improvement and gradual change, it is less noticeable, thus often neglected by the grand narratives, which preferred wars, political struggles, constitutional changes, major diplomatic incidents, etc. Society, even when revolution was at its most intense, could not be reduced to a shell of abstract ideas. It is still a complex body of morals, sentiments, traditions, and individual initiatives. After the establishment of People's Republic of China in 1949, especially during the Cultural Revolution, individual initiatives seeking social-improvement experienced great difficulty; however, even in the harshest times, certain elements of conservatism were preserved. Gu Zhun (1915–1974), economist who witnessed radicalism at its worst during the heyday of Cultural Revolution, acutely sensed a tidal change of public sentiment from radicalism towards gradual improvement and heroically championed a “transition from idealism to empiricism”.<sup>6</sup> Gu's is just one of the examples the Chinese intellectuals did not submit themselves in spite of harsh conditions, but consciously seeking to preserve a sense of conservatism. Today, decades after Deng Xiaoping's Reform and Opening-up, which launched the country onto the route of market economy, remarkable progress was achieved with respect to building a civil society. Although a systematic institutional reform that could have established these values had yet been implemented, China has at least transcended the old revolutionary discourse and been advancing towards a more rational and healthy future.

Two questions need to be clarified before we go further to establish legitimacy for this counter-revolutionary conservatism in the context of China's modernization. First, conservatism in modern China is not a continuation of traditional feudalistic dynastic politics; actually, reforms of such nature are beyond the scope of this book. Although traditional China had experienced great social changes, such as the dynastic change of Qin replacing Zhou, Han replacing Qin, or ideological changes, such as Confucianism replacing Taoism as the governing philosophy, Dong Zhongshu's reinterpretation of Confucian classics, or political reforms such as Wang Anshi's Reform, no matter how profound their implications may be, these changes fall into a different category. The legal, political and academic conditions that traditional “conservatism” relied on were no longer there after China's defeat in the Opium War. The conservatism that this book addresses refers solely to modern conservatism,

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<sup>5</sup> See Gao Quanxi, *The Constitutional Moment: On the Imperial Edict of the Manchu Emperor's Abdication*, Guangxi Normal University Press, 2011; The Chinese constitutionalists, represented by local gentry class, played a great role in stabilizing local political order and preserves autonomy, which shows the social influence and political power of the Chinese conservatives. See Zhang Ming's *Xinhai, A Rocking China*, Guangxi Normal University Press, 2011.

<sup>6</sup> See Gu Zhun's *Gu Zhun Anthology*, Guizhou People's Publishing House, 1994.

which is different from the aforementioned form of “conservatism” mainly due to its legitimacy. Modernization of the U.K and the U.S.A, especially the former, though experienced republican radicalism momentarily, retained strong ties with tradition. For that reason, Glorious Revolution is sometimes regarded as a restoration of the old dynasty. One example is the Whig history, which portrayed British history as a consistent whole without the kind of upheavals that China experienced in late Qing dynasty. However, reality was hardly as harmonious as the Whig history portrayed. Otherwise, it would be hard to explain books such as *Leviathan*, revisionist view on Glorious Revolution and the emergence of Whig history itself. That, however, should not prevent us from admitting that modernization in Britain and America was less abrupt than in France and Russia.

China’s conservatism cannot be modeled on the British model given the great gap between its modern state and classical state. The incompatibility of the two to some extent justified a French-style radical revolution to introduce an institutional overhaul. At a time when possibility of self-developed modernization from the old system exhausted, Western radicalism arrived in China as an inspiration. Yet the question remains: what to do after the revolution. How to treat tradition and revolution are but two sides of the same coin. If a country cannot treat its revolution in a reasonable way, it is unlikely to treat its tradition in a reasonable way. Czar Nicholas II was an example of a monarch that intransigently rejected revolution and insisted on traditionalism, and he was annihilated with his reign. The same question is also faced by China. If radical revolution has the way, the only way to treat tradition is criticism, denial, and even smearing. Destruction is to be praised; “poor and blank” is a preferable because “the best picture can only be drawn on a piece of blank paper” (translator’s note: this is believed to be a Mao Zedong quote). Although such way of thinking dominated much of China’s modernization, it was barren soil for concepts such as liberty, constitutionalism, democracy, and rule of law.

Is there a way to reconcile the traditional and the modern, to develop a form of conservatism that safeguards the revolutionary ideals? As we said, revolution, its rational side notwithstanding, requires someone to pull the brake to save it from self-perpetuation. It can only succeed when revolutionaries can be highly critical of themselves, and actively transform themselves into a constructive counter-revolutionary force. If revolution is all about destruction, and laws cannot take hold, then the role of lawmakers has to be taken up by other forms of counter-revolutionaries other than revolutionaries themselves. Law is different from revolution in the fact that it is a safeguarding force and it does not reject tradition. This is not to say that constitutionalism is subordinate to tradition for its attitude towards tradition is one of equal dialogue and selective adoption. The post-revolution relationship of the old and the new should not be one of disconnection and antagonism. However, following one after another revolutions, which spanned over a century, China has not produced a voluntary “restoration” by the revolutionaries that brought China back to the path of conservative development, which barred a gradual and spontaneous improvement from happening. By revolutionary “restoration” we mean to bring things from extreme revolutionary mode back to normal state. When revolution succeeded, old institutions were abolished, it is time for people to shelf the spirit of

revolution and let constitution take over and the normal social order to recover. In this sense, restoration is not about the revival of the old, but a rather sympathetic reconciliation between the modern and the old. The major Chinese revolutions failed to achieve this objective; as a result, the governments built by them were often unstable. In spite of much bloodshed in the name of revolution, a modern state that upholds rule of law failed to be brought on. In comparison, the claim to immortality of the English Glorious Revolution and American Civil War lies in the fact that both of them achieved a “revolutionary restoration”. As a result, when military actions ceased, victory was shared by both sides. The ashes of the war dead from both sides entered the shrine and celebrated as heroes – reconciliation was thus achieved. By the same token, for China, the best way to measure how successful a revolution is should be whether the “revolutionary restoration” was accomplished. This approach should also be applied to measure the success of modernization. There should be no more revolutions except those that seek self-termination. We pay homage to our revolutions, praise their glory, though we are not to destroy the order and life that we enjoy today for another one. What we should do is to use tradition to relieve the pain caused by revolutionary radicalism, by doing so, when looking back at the 170 years of great change we will be able to appreciate the Chinese modernity better.

These are the reasons justifying the writing of this book, which is an effort that seeks to examine the modern judicial reform from late Qing Dynasty onwards. By combing through the historical relics, we hope we can connect the dots and show the direction towards modernity and identify the causes behind victories and failures alike. We hope by such a book, we can help people appreciate a healthy and rational road towards modernization, thereby help ourselves to find a way out of the mist, and resolve the legacy left by a century worth of revolutionary radicalism.

The reason that this book chooses rule of law as the entry point is because establishing a modern judicial system is a main objective of the first wave of social reforms in late Qing dynasty. This can be seen in the popular slogan of the day: *Bian Fa Tu Qiang* – Change Law to Become A Prosperous State. Noteworthy is that the rule of law here refers to a modern political state and structure based on the principle of constitutionalism. Rule of law includes both political institutions formed under extreme conditions that lasted into non-extreme conditions, as well as political and social order formed under the non-extreme conditions. More importantly, it proposes a set of procedures that can smoothen the transition from extreme politics to everyday routine one. In European history, rule of law and related institutions were established gradually over the course of centuries, during which Europe experienced Renaissance, Reformation, and Enlightenment, development of capitalism and capitalist revolution. Constitution is the most important condition as well as the core of modern rule of law institution. It is installed with an aim to protect individual’s rights from government’s violations by restraining the latter’s power. Rule of law not only constitutes the mainstream Western political form, but also shapes its political culture and social form, which in turn facilitates its development, and through its global expansion, achieved world domination. Hence whatever differences between late Qing constitutionalist movement, Xinhai Revolution, Republic of China, and People’s Republic of China, they shared one thing in common, which

is that all of them attempted to build a strong and modern China by establishing a modern political form. The transformation since Hundred Days Reform is a history of effort seeking to install constitutionalism in China in response to Western provocation. This concept of China's rule of law development entails bringing China up to the standard of international mainstream political and legal civilizations, rather than resisting them.

To view the Chinese modernity from the perspective of rule of law, we need to answer questions that concern the acceptance of modern rule of law concept in China, steps that have been taken to improve its legal system, and construction of a modern and healthy rule of law framework. Up until 1978 when the Reform and Opening Up was launched, all efforts with a view to achieve the above-mentioned objectives had failed to achieve these objectives. The Hundred Days' Reform was purged, their leaders banished, or executed. Later, KMT revolutionaries abolished China's first constitution, putting an end to the Constitutionalist Movement. Then Yuan Shikai usurped republic and declared himself emperor, before his sudden death plunged China back into anarchy. During the period, the Chinese people had nothing but the name of a constitution with no real rights given to them. A ray of hope shined briefly when the CPC joined KMT in their anti-Japanese effort, but then collapse legal. In 1949, China's status as an independent nation was finally secured, but its judicial construction suffered great setbacks due to the ensuing political turmoil. In 1978 when the Party sought to rectify its policies, the Chinese legal development stood close to where it started in late Qing dynasty. Reform to make China a strong nation was again the public consensus. Measures were taken to restore democracy and rule of law. The "socialist market economy" was recognized and written into the constitution. A consensus was formed among the country's leadership that rule by law as well as a robust socialist democracy are vital to this form of economy. Legal development was given high priority, leading to the establishment of the most fundamental norms of the public law and private law. Rule of law was constitutionalized, with specialized clauses dedicated to protecting human rights and right to private property. All of these pushed China's legal development to a new height.

That is not to say that the mission of China's legal construction has been accomplished. Neither can we claim China's modernization has succeeded, or flaunting the so-called "China Model" or "China Experience" as great contribution to the world. Some may argue that aside from national independence, at least when judging by economic development and social welfare, China achieved dazzling growth. But has it met the targets that we set a century ago? Today as a result of globalization, we have been integrated deeply into the modern world order; however, when measuring by social and political development levels, we are still in an early stage of modernization. This assessment also applies to the development of modern political institutions – values underpinning modernity such as liberty, rationality, individual rights, as well as institutions like market economy and democratic constitutionalism have not been fully implemented. China remains on its way towards becoming modern state. Achievements that we have made, such as independence

and economic growth, are the basics. When it comes to the conceptual and spiritual aspects, few things truly remarkable have been accomplished.

The problems that we try to solve over the past 170 years corresponded to those that were faced by Western countries in the seventeenth to nineteenth century. While we are solving the problems that the West had solved hundreds of years ago, we must be aware that we are in an era drastically different from theirs. Challenges come from two fronts: While we are still on our way in building a modern nation state according to the principles of liberty and democracy, which the West spent centuries to accomplish, we are seeing the trend is shifting to “denationalization”. The flaws of modern states underpinned by civil liberty, democracy and constitutionalism and international order constructed according to these principles are becoming more and more pronounced. Thus, while we are still on our way towards modernity, we also need to cope with the post-modernity challenge. For example, the legitimacy of modern nation state has been weakened with the rise of globalization. Moreover, our 300 years of political and historical burden did not always make things easier. To handle it requires us to be prudent and balanced in decision-making, so that we can retain our Chinese characteristics while joining the world order, find a balance between modernity and pluralism, unique tradition and universalism, indigenous resources and Western institutions.

To sum up, not only the China’s legal modernization has not achieved full success yet, the risk of regression remains; not only the so-called “China Experience” or “China Model” not worth of bragging about, we should apply more caution and prudence; not only a long-term vision is needed, we should also be prepared for the complexity of the challenge that future may present. With these in mind, the book endeavors to draw a sketch of the evolution of China’s legal modernization, in doing so, providing a coordinate system for the future reforms. We hope by a review of the past 170 years and especially the latest 30 years of constitutional and legal reform, to identify the shortcomings of revolutionary radicalism, but we also intend to do so without denying the legitimacy of revolutionary radicalism. We are looking for a modern conservative way that can ease revolutionary radicalism without negating the historical roots and national grievances.

Beijing, China

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