

Chinese Modernization of the Rule of Law: Governance Philosophy, Judicial Logic and Practice Review

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Abstract

The socialist rule of law with Chinese characteristics contains a wealth of practical wisdom in governance, and is a scientific methodology for our comprehensive construction of a socialist country under the rule of law. The Party's 20th National Congress deepened the understanding of the regularity of socialist rule of law construction, and expanded and innovated the practical dimension of socialist rule of law thought with Chinese characteristics. The socialist rule of law with Chinese characteristics is not a simple construction of the rule of law theory, but a two-way deepening and sublimation of the rule of law theory and the rule of law practice. China's rapid economic development and long-term social stability have broken the "Huntington paradox", which mainly relies on the following two aspects of the rule of law practice. The first is China's unique grass-roots governance model, which is typically represented by Fengqiao experience and Pujiang experience. Fengqiao experience and Pujiang experience are combined fists, closed-loop measures to solve grassroots conflicts and disputes, and typical experiences in the process of China's rule of law practice. The second is "strict justice" and "fair justice". In judicial practice, it is necessary for judicial justice to guarantee the procedural rights of litigants. As two basic practical concepts in the socialist rule of law with Chinese characteristics, the concept of grassroots governance and the concept of justice enrich the practical wisdom of the construction of the rule of law in our country and help the transformation of our social governance model.

Keywords

Socialist rule of law with Chinese characteristics; Modernization of the rule of law; Pujiang experience; Fengqiao experience; Impartial administration of justice.

1. Governance Philosophy of Chinese Modernization of The Rule of Law.

Like all areas of Chinese-style modernization, Chinese-style modernization of rule of law must be the modernization of rule of law led by the Communist Party of China.[1] The concrete way in which the modernization of Chinese rule of law is carried out in the course of history is the practical form of the road of socialist rule of law with Chinese characteristics, and its dynamic mechanism, overall logic and realistic path all have distinct Chinese characteristics.[2] The modernization of Chinese rule of law must adhere to the guidance of socialist rule of law thought with Chinese characteristics. The theory of socialist rule of law with Chinese characteristics is not a simple construction of rule of law theory, but a two-way deepening and sublimation of rule of law theory and rule of law practice. An important aspect of the modernization of the rule of law in China is the practice at the grass-roots level. Fengqiao experience and Pujiang experience are typical representatives of the wisdom of grassroots governance in the socialist rule of law thought with Chinese characteristics. They are a set of combined fists, closed-loop measures to solve grassroots conflicts and disputes, and important experience summary in the practice process of rule of law in China. Fengqiao experience and Pujiang experience start from two dimensions and meet the different needs of grassroots

conflicts and disputes. The experience of Fengqiao is mainly based on the people, relying on the wisdom of the people to resolve the contradictions and disputes at the grassroots level. The experience of Pujiang is mainly based on leading cadres, leading cadres actively solve the problems of letters and visits, leading cadres take the initiative to visit, receive visits, communicate and exchange with the people face to face, and help the people to solve problems. Finally, it will be transformed into a national demonstration of work wisdom in dealing with conflicts and disputes at the grassroots level.

The experience of Fengqiao in the new era mainly includes the following three aspects. First of all, leading cadres to visit the grassroots, receiving visits is the main content of "Fengqiao experience". We must give full play to the initiative and initiative of leading officials, and encourage leading officials to listen to the views of the masses at the grass-roots level. In the book Zhijiang Xinyu, there is a special article about the resolution of grassroots conflicts and disputes, "Do mass work face to face", which mainly talks about the transformation of the "petitioning" of the people into the "visiting" of leading cadres, and advocates that the form of leading cadres' petition work should be "grounded". "Reflecting problems" is not the only form of petition work. In the work of letters and visits, our leading cadres should abandon the "solidified" mode of letters and visits, actively participate in the work of visiting and receiving visits, and constantly innovate the system and mechanism of letters and visits. Leading cadres take the initiative to visit and receive visits at the grassroots level is not to overreach, but a change in the thinking of our leading cadres' petition work, helping to build a more democratic and more grounded petition work model. Second, we will handle complaints and visits in accordance with the law. Leaders at all levels should make it clear that petition work should be legalized and standardized. To carry out petition work according to law is a core viewpoint of Pujiang's experience and the collective wisdom of petition work. Leading cadres should often go to the grassroots to conduct visits and receive visits, and adhere to the important principle that "handling complaints according to law" must be adhered to. In 2022, the Regulations on Letters and Visits Work clearly stipulates that the work of letters and visits shall be included in the development track of the rule of law, and the development of the rule of law and standardization of the work of letters and visits shall be guaranteed. So the Pujiang experience becomes the rule of law experience. Finally, the source of resolving conflicts and disputes. Resolving disputes at the source is the basic principle of petitioning. Leading cadres dig into the pit of contradictions in order to solve the problems of the people. By connecting the experience of Pujiang, the principle of handling complaints in accordance with the law and the actual effect of resolving disputes at the grassroots level, we can see that the thought of socialist rule of law with Chinese characteristics is the wisdom and experience result of the close combination of rule of law theory and practical activities.

The Pujiang experience is a method for leading cadres to personally advocate and take the lead in visiting and receiving the masses, handling the problems of letters and visits according to law, and resolving contradictions and disputes at the source. Pujiang County used to be a place with the most serious petitioning cases in Zhejiang Province. Leading cadres go to the Pujiang area to communicate and exchange with the masses face to face, and effectively help the people solve problems. The experience of Pujiang has important times value and is the wisdom bank of grass-roots governance in our country. The experience of Pujiang is mainly to optimize the working methods of letters and visits, and to help the overall harmony and stability of our society. First of all, Pujiang experience is the concrete embodiment of the purpose of building the party for the public and governing for the people. Serving the benefit of the people is the essential requirement of our Communist Party in governance. If the purpose of founding the Party for the public and governing for the people is not done well, our Party's ruling position will be shaken, so the Pujiang experience is directly related to the stability of our Party's ruling position. Pujiang experience for the people to solve problems, for the benefit of the people, fully

reflects the fundamental purpose of building the party for the public, governing for the people, is a full embodiment of the people-centered values. Secondly, the Pujiang experience is a scientific method to promote the modernization of the national governance system and governance capacity. The petition work is an important part of the modernization of the governance capacity of the national governance system. Therefore, the realization logic of petition work must be the experience of Pujiang. Grassroots governance experience forms a closed-loop logical system with the modernization of our national governance system and governance capacity. Finally, Pujiang's experience has helped achieve common prosperity for all people and created conditions for common prosperity for all people. The practical work for the people is stipulated in the demonstration zone of common prosperity.

2. Judicial Logic of Chinese Modernization of The Rule of Law.

An important aspect of the modernization of the rule of law is the modernization of the judiciary. Judicial modernization is a historic turning point in the evolution of judicial civilization in human society, aiming to realize the revolutionary transformation and development from the judicial concept, judicial system and judicial value of traditional society to that of modern society. [3] Our judicial modernization should have Chinese characteristics and be deeply rooted in our excellent legal cultural tradition. In the process of constructing the modern rule of law in China, consciously inheriting the excellent traditional Chinese legal culture is not only a prominent feature of the modernization of Chinese rule of law, but also a basic experience of the modernization of Chinese rule of law.[4]When designing the litigation system, we will set trial procedures as the core content and require the court to hear cases in accordance with the procedures stipulated in the litigation law.[5]Litigation is a sign of civilization and progress of The Times, and it is also an important starting point of judicial modernization in our socialist country ruled by law. In the field of civil disputes, mediation is used in addition to litigation, which is the usual means of dispute resolution. The combination of mediation and trial is the symbolic element of Chinese civil dispute settlement mechanism, both of which are important ways to solve civil disputes in China. Different from the common law system and the civil law system, the exercise mode of the judicial power of the courts in China is not only limited to the single mode of "court trial", but also the people's mediation is included in the operation mode of the judicial power of the courts. China's litigation system attaches great importance to the mediation mode, which is not only the continuation of the thought of "rule by virtue" in Chinese traditional law, but also the product of the practical wisdom of socialist rule of law with Chinese characteristics. According to law, a large number of legal provisions in our country provide for the system of "people's mediation". Judicial credibility is an important part of the construction of China's socialist society under the rule of law. If we want to enhance the credibility of the judiciary and enhance people's satisfaction with the judiciary, we must ensure the fairness of the proceedings. The importance of procedural justice is mainly reflected in the following two aspects: first, the court's judgment results need to be obtained through litigation procedures; Second, the strict legitimacy of the litigation procedure is a strong guarantee that both parties to the lawsuit are "convinced" of the judgment result. The unfairness or defects of the proceedings will cause the litigants to seriously question the credibility of the judiciary. Therefore, the meaning of "strict justice" and "fair justice" is to fully protect the procedural rights of both parties.

The judiciary is the last line of defense to safeguard fairness and justice. We must improve judicial procedures and ensure judicial fairness and fairness in accordance with the law. First, we need to avoid mechanistic justice. Mechanical justice is formalism and bureaucracy in the judicial field, which will seriously infringe on the judicial justice of our country. Mechanical justice usually shows that judicial personnel only know to abide by the legal text and legal logic,

without considering the specific situation of the case and social repercussion, and discuss the law and handle the case according to the law, resulting in judicial decisions deviating from common sense, common sense and common sense, and even from the substantive justice of the law. [6] Secondly, we must attach importance to the legitimacy of judicial procedures and protect the litigants' right to Sue according to law. In order to ensure the proper implementation of litigation procedures, the key is to ensure that the litigants' right to Sue is not infringed. The right to Sue is the basic litigation right endowed by law. Our national legislature attaches great importance to the legislative protection of the right to Sue, and solves the difficult problem of prosecution by changing the litigation mechanism and amending the relevant rules of prosecution in the civil Procedure law many times. We adopt a zero-tolerance attitude towards cases that are not established, and for those that really should not be filed, we must make a written ruling not to accept the case. In this way, from the original court can orally make a decision not to accept, to the court must make a decision not to accept, and then the decision must be in writing, which is an important embodiment of the state to protect the right to Sue. At present, we must ensure that the parties can exercise the right to Sue according to law. It is worth paying attention to that there is a conflict between the appointed mediation of the people's court and the litigant filing a lawsuit according to law. How to balance and coordinate the conflict between the two becomes the key to protect the litigant's right to Sue. In judicial practice, in order to alleviate the contradiction of a small number of cases, some courts try to settle as many cases as possible by delegating mediation. In order to protect their legitimate rights and interests, the parties have filed a civil lawsuit with the court, but the court takes into account the reality of "fewer cases" and will appoint mediators to resolve civil disputes before litigation. [7] Although China actively advocates the multiple resolution of contradictions and disputes, it is easy to put the parties who do not want to mediate into the state of dispute mediation, which infringes the legal litigation rights of the parties.[8]Therefore, the premise of delegating mediation is the willingness of the parties, and out-of-case mediation can not be forced against the will of the parties.

We should establish a people-centered concept of rule of law. The people-centered rule of law is a kind of "great practice view", that is, the people's practice view, whose scope includes not only the special legal practice, but also the comprehensive practice of politics, economy and culture. [9] The concept of "people-centered" rule of law requires that we must protect the parties' right of appeal according to law. We must give the litigant the right of appeal, which has two values in strengthening "judicial justice". First of all, we protect the parties' right to appeal in accordance with the law, which can provide "legitimacy" proof for the final judgment of the people's court. Secondly, we can also find the trial errors of the original trial court and correct them in time during the appeal process of the parties, in addition, it can balance the difference in the exercise of discretion of the upper and lower courts, and finally implement the enhancement of judicial credibility. In this regard, it may be necessary to pay attention to several aspects at present. First, the relationship between the rejection rate of appeal cases and the quality of trial of the court should be viewed dialectically. We cannot mechanically equate the rejection rate of appeals with the quality of the court's trials. According to the principle of procedural law, a certain proportion of remanded judgment rate in appeals cases is an important symbol of the sound operation of a national appeals system. Second, appeal cases should be tried in court as far as possible. According to the provisions of China's Civil Procedure Law, the court can adopt a trial method without a court hearing after reviewing the papers and inquiring the parties. In judicial practice, some appeals judges, in order to pursue the efficiency of litigation, adopt the trial method of no court session, which is easy to weaken the protection of the litigants' procedural rights. Therefore, appeals are generally recommended to be held in court. Third, the parties' right to consent should be fully respected and protected. According to the newly revised Civil Procedure law, in some appeal cases, judges can use the method of "sole

trial". After seeking the consent of the parties, the judge may adopt the mode of single-seat trial. However, in judicial practice, in order to broaden the use of the right to independent trial, the appellate court only asked the opinions of the litigant, but did not interpret the legal provisions of the parties, and did not seriously treat and protect the consent of the parties.

3. Practice Review of Chinese Modernization of The Rule of Law.

The essence of modernization is the modernization of human beings, and the law of human subjectivity is the internal law of the modernization movement, which fully embodies the value relationship between subject and object. The evolution of a legal civilization is, to a large extent, a historical process in which the freedom and rights of social subjects are gradually institutionalized and legalized. [10] The socialist rule of law with Chinese characteristics is the wisdom of the rule of law in China's rule of law practice, which originates from the practice of the rule of law with Chinese characteristics, and has important guiding significance for the construction of the rule of law in China. The practical, intelligent and innovative development of the socialist rule of law with Chinese characteristics needs to be focused on and controlled at the following three levels. First, the theory of the practice of the rule of law has been innovated and developed. Secondly, the optimal implementation of the rule of law practice plan. Finally, the scientific review of the practical effect of the rule of law. These three aspects are a closed-loop logical whole. Today, when we study and study the socialist rule of law with Chinese characteristics, it is easy to neglect the inspection of the implementation effect of the rule of law thought. Has the rule of law theory been closely integrated with practical work?

The evaluation and analysis of the practical effect of the rule of law can be achieved through the following three steps. First of all, we can use artificial intelligence technology to capture and analyze the sample data of the implementation effect of the rule of law thought in provinces, cities, counties and regions across the country to obtain the rule of law practice effect index. Secondly, we analyze and summarize the evaluation results of the rule of law practice, and on this basis, condense the typical rule of law practice wisdom. Finally, in the national practice of the rule of law, the typical and general practical wisdom will be promoted and applied. For example, Zhejiang Province evaluated the effect of the implementation of the rule of law in the cities and counties in the region and summed up the "Pujiang experience"; Anji "Fishing village Experience"; Tongxiang autonomy, rule of law, rule of virtue combined governance experience; Yongkang "Longshan experience"; Wuyi's "post-Chen experience" and other typical, recognizable and extendable experiences.

The reason for China's rapid economic development and long-term social stability: China's unique grass-roots governance model, the typical representative is the Fengqiao experience and the Pujiang experience. When we talk about the two development goals of economic development and social stability, we will refer to the famous "Huntington's paradox", which holds that rapid economic development and political and social stability are difficult to achieve. However, under China's unique grass-roots model of governance, the "Huntington paradox" fails, and China has well coordinated and solved the problem that "economic development and political stability are difficult to have both sides". Since reform and opening up, China, as the largest developing country, has enjoyed strong economic growth and sustained social stability. Where does China stand? Fengqiao experience, Pujiang experience and other grassroots governance wisdom organized to help the formation of long-term stable and prosperous development of Chinese society. Under the guidance of Fengqiao experience and Pujiang experience, our society has constructed a benign operating logic, that is, contradictions are effectively resolved, rights are fully protected, the relationship between people and people is harmonious, and economic exchanges are guaranteed, and finally social stability, the people's people are better and the market economy is rapidly developing.

Judicial fairness and justice is another important dimension in the practice of socialist rule of law with Chinese characteristics. The Party Central Committee clearly instructed that the judicial organs should "strictly administer justice" and "strive to make the people feel fairness and justice in every judicial case." This puts forward the requirements of "the people's position" and "the concept of fairness and justice" in our judicial work. Focusing on this core concept of justice, the CPC Central Committee issued a series of important instructions on the reform and construction of our judicial system and litigation system, including deepening the reform of the litigation system; Promote the separation of speed and slowness of cases, separation of light and complexity; Adhere to and develop the experience of Fengqiao in the new era, and adhere to the non-litigation dispute resolution mechanism in front of it. If we want to realize the beautiful vision of "judicial fairness and justice", we must pay attention to strengthening the guarantee of litigation procedures. Litigation system is an important means to solve criminal and civil disputes through trial, maintain national social stability and protect the legitimate rights and interests of the parties. In terms of system design, litigation is still designed according to the principle of compulsory dispute resolution. For example, the challenge system, the open trial system, and the trial supervision procedure are all aimed at ensuring that the court makes decisions that conform to the concept of fairness and justice.

4. Conclusion

An important aspect of the socialist rule of law with Chinese characteristics is the grass-roots practice. The theory of socialist rule of law with Chinese characteristics is not a simple construction of rule of law theory, but a two-way deepening and sublimation of rule of law theory and rule of law practice. Fengqiao experience and Pujiang experience are typical representatives of the wisdom of grassroots governance in the socialist rule of law thought with Chinese characteristics. They are a set of combined fists, closed-loop measures to solve grassroots conflicts and disputes, and important experience summary in the practice process of rule of law in China. Judicial credibility is an important part of the construction of China's socialist society under the rule of law. If we want to enhance the credibility of the judiciary and enhance people's satisfaction with the judiciary, we must ensure the fairness of the proceedings. The importance of procedural justice is mainly reflected in the following two aspects: First, the court's judgment results need to be obtained through the proceedings; Secondly, the strict legitimacy of the litigation procedure is a strong guarantee for the parties to the judgment. The unfairness or defects of the proceedings will cause the litigants to seriously question the credibility of the judiciary. Therefore, the meaning of "strict justice" and "fair justice" is to fully protect the procedural rights of both parties. The socialist rule of law with Chinese characteristics is the wisdom of the rule of law in China's rule of law practice, which originates from the practice of the rule of law with Chinese characteristics, and has important guiding significance for the construction of the rule of law in China. The practical wisdom innovation and development of the socialist rule of law with Chinese characteristics needs to build a closed-loop logical whole from three aspects: the innovation and development of the rule of law practice theory, the optimization and implementation of the rule of law practice plan, and the scientific review of the effect of the rule of law practice.

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