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Promotion of the Chinese Legal Culture and System in the New Era*

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Abstract The 5000-years uninterrupted Chinese legal culture embodies the political and legal wisdom of the Chinese nation and is a source of pride for the Chinese nation. It has provided extremely rich resources and treasures for the construction of socialist rule of law with Chinese characteristics. It has been inherited vertically, evolved intergenerationally and reserved continuously. Originating from both the historical legal system and from Marxist historical materialism, the Chinese legal system has profoundly influenced neighboring countries. The comprehensive governance of politics, law, and morality in ancient China, as reflected in the *Rites of Zhou*, a book of the Western Zhou Dynasty (1027–771 BC) on cultural ideology and political structure, provides an early work on the governance of ancient China. Chinese legal culture has remained progressive, and with the great rejuvenation of the Chinese nation, it is now important to promote Chinese legal culture for construction of the Chinese legal system in the new era.

Keywords legal culture, Chinese legal system, origin of law, comprehensive governance, legal civilization

Chinese President XI Jinping once pointed out: "Socialism with Chinese characteristics did not drop from the sky ... It is the bequest of and development from the Chinese civilization of the past 5,000 years or more. It is a valuable result of the painstaking efforts made by our Party and the people, at great cost. It is a hard-won achievement."[1] The 5,000-year uninterrupted Chinese legal culture has condensed the political and legal wisdom of the Chinese nation.

I The Trajectory of Development of 5,000-Years of Uninterrupted Chinese Legal Culture

Throughout more than 5,000 years of Chinese legal history, historical updates have created a vertical and continuous development trajectory. This historical process has internal connectivity and relevance, featuring innovation at different times. To maintain governance order, rulers of new dynasties have always carefully reviewed cons and pros of the legal systems of the previous dynasty, have learned lessons from them, and have updated them to create their own laws and regulations.

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1 On January 5, 2018, XI Jinping delivered an important speech at the opening ceremony of a study session on XI Jinping Thought on Socialism with Chinese Characteristics for a New Era and the guiding principles of the 19th National Congress of the Communist Party of China (CPC).

Such updating has been an established practice for every new dynasty. Although these updates share the same fundamentals, they somewhat differ in content, as they have both inheritance and innovation, reflecting the new circumstances of the times.

Xia was the first dynasty in ancient China. After more than 400 years in power, its last emperor, Jie, was cruel to the people and was fiercely resisted by the people,[2] who even sacrificed themselves to end his merciless rule. Shang, the following dynasty, was founded by merciful Tang, raplaced the regime of Xia while basing on it, and its idea was widely read as "if one can make things better for one day, he should make them better every day."[3] Furthermore, he secured support from clans and religions, making Shang a powerful and expansive state. However, during the reign of the last king of Shang Dynasty, King Zhou bloodily suppressed the people and lost their support, leading to conquest by the smaller neighboring state of Zhou. Drawing on the lessons of King Zhou's failure, the Zhou Dynasty reinstituted people-caring governance, believing that "they should not only use water as a mirror to observe themselves, but should also reflect on themselves based on the public opinions,"[4] and "what the people want, even heaven will obey their wish."[5] For the benefit of the people, the Zhou Dynasty introduced rites, music, politics and punishment for national governance, and practiced prudence of prioritizing morality over punishment as the guiding principle, bearing deeply in mind the failed governance by the Shang Dynasty. These fresh policies and measures quickly consolidated the Zhou Dynasty operations, and stabilized their rule of hundreds of years.

In the early Western Han Dynasty, the Han ruler realized that the once-considered-inconvincible Qin Dynasty collapsed in their second-generation. Taking the lessons learned from the Qin's demise, the Han ruler concluded that excessive use of laws and harsh punishments triggered the uprising, and that relying solely on laws and punishment but neglecting virtues and rites was insufficient to govern effectively. Therefore, they abolished all the harsh laws of the Qin Dynasty and incorporated Confucianism's moral principles into the legal system. They further combined laws and rites, emphasizing the importance of virtues as the primary means of governance, with punishment as the last resort. This approach had a profound impact on later dynasties.

During the early Tang Dynasty, the Emperor Li Shimin often discussed with his officials the reasons for the downfall of the previous powerful Sui Dynasty, which perished after only two emperors' reigns. He strongly felt that the disrespect for the "Constitution" and disregard for laws and regulations killed the Sui Dynasty. Therefore, he enforced the rule of law seriously, and

2 尚书 (The Books of Chow), Zhonghua Book Company, at 160 (1980).
3 礼记 (The Book of Rites), Zhonghua Book Company, at 1673 (1980).
4 See fn. 2 at 207.
5 See fn. 2 at 181.

"whoever commits a crime, he will be punished equally according to the law." Furthermore, he introduced new laws based on the Sui Dynasty's Kaihuang Code and developed the early Tang Dynasty's Wude Code. Tang Emperor Gaozong's Yonghui Code with Commentaries, and Tang Emperor Xuanzong's Kaiyuan Code, together with the Zhenguan Code were collectively known as the Tang Code, which has been considered "modest compared with all the other codes developed before the Qing Dynasty" and which "used rites as the criteria for legal actions." "The foundation of politics and education lied in moral conduct, with the aim of cultivating people's moral qualities, while punishment was used to discipline lawbreakers and maintain social order." The foundations of politics and education as one hand, and the use of punishment as the other, that principle were integrated and complementary, with one being indispensable to the other. Only by combining the foundations of politics and education with the use of punishment could a harmonious society be created. In addition, attention was given to the welfare of the people. Thus, the Tang Dynasty introduced the land equalization law and policy to ensure the people's prosperity. The innovative Tang laws and measures created the most glorious periods in Chinese history, the Zhenguan Reign and the Kaiyuan Prosperity.

Taking lessons from the corrupt and cruel governance of the late Yuan Dynasty, the early Ming dynasty was strict with its officials and highlighted the functions of laws and regulations, having restored law and order. In the thirtieth-year reign of the Emperor Hongwu, the Great Ming Code was formulated and ZHU Yuanzhang officially declared that "we guide the people with rite and law to restrain those rebellious and stubborn individuals."[6] In this case, the Ming Dynasty advanced their governance effectively through both rite and law.

The Qing Dynasty, being the last feudal dynasty, deeply felt the pains of the Ming downfall, which was caused by heavy taxes, governance incompetence, and eunuchs' excess participation in state affairs that turned illegitimate actions (which had been strictly prohibited during the early Ming Dynasty) into legitimate ones. Therefore, coming to office, the Qing Dynasty immediately abolished the three-tax system and additional levies, strictly prohibited eunuchs from participating in politics, and held high the legal system, surpassing previous dynasties in developing the comprehensive legislation to the maximum extent that was possible in a feudal society. Emperors Kangxi, Yongzheng, and Qianlong ruled for 100 plus years to social prosperity that was strongly based on profound reflection on the collapse of the Ming Dynasty and on comprehensive new legislation.

As can be seen from the above, the development process of Chinese legal culture is based on reality, vertically

6 HUAI Xiaofeng, ed.,《大明律》御制大明律序 (*Preface to Great Ming Code*), Law Press・China, at 1 (1999).

inherited, and constantly evolved, full of rational legal thinking and free from any interference from religious theology. This process has been continuous and has innovated according to the characteristics of the times, so it is neither conservative nor stagnant. There has been a spiral development instead of a mere repetition. If the general rule of vertical inheritance and continuous updates is the general pattern of the development of Chinese legal culture, then each new dynasty, taking history as a mirror, has reformed the old and introduced the new; this opening up in the light of new circumstances is a particular characteristic of the development of Chinese legal culture. Thus, history shows continuity as well as the particularity of the circumstances of different historical periods. The updating of legal culture has reflected continuous legal improvement, based on a strong social foundation and public support. The promotion of integrity, loyalty, filial piety, sincerity, and harmony, as well as the advancement of personal integrity and education, have all generated the mentality and psychology of the Chinese nation. With the extension of legal culture, public legal consciousness has continued to improve, and the increasing percentage of civil lawsuits among all lawsuits after Song Dynasty has demonstrated the progress of public legal consciousness. However, the relatively closed geography, the isolationist policies of past autocratic governments, and the long-term preservation of a self-sufficient natural economy, have hindered Chinese legal culture in exchanging with, comparing to, and learning from foreign legal cultures. This isolationist stance left China in the late Qing Dynasty without "a set of discourse systems that could compete with those of Western society,"[7] and caused Chinese legal culture to gradually fall behind the times. As a result, after the Opium War with the UK around 1840 and faced with the impact of Western legal culture, China was forced to begin the process of modernizing its legal system. Since then, Chinese legal culture has entered a new stage.

II Long-Term Influence of the Chinese Legal System and Culture on Neighboring Countries

The Chinese legal system had formed into a unique legal system by the Tang Dynasty, after a long historical development. It had an extensive influence on neighboring countries for over 1,000 years. Countries such as Japan, Korea, and Vietnam recognized the Chinese legal system and imitated the legal systems of Tang, Ming, and Qing dynasties to develop their own systems.

Japanese scholars of the Tang studies believed that "During the Tang Dynasty China was a well-developed and legally complete country. It was a rare

7 DU Tao, 从"法律冲突"到"法律共享"：人类命运共同体时代国际私法的价值重构 (From "Conflict of Laws" to "Sharing of Laws": Value Reconstruction of Private International Law in the Community of Shared Future for Mankind Era), 3 当代法学 (*Contemporary Law Review*), 153 (2019).

and precious country."[8] Therefore, they suggested that Japan should imitate the Tang Code in developing their own legal system. The Japanese legal codes such as the Kinai Code,Taika Code, and Yoro Code, developed over a fifty-year period, were all based on the Tang Code. They became the core of the Taika Reform. Long after the Tang Dynasty, many Japanese scholars studied the Ming Code and developed their own legal works, such as Takase Chunan's "Ming Code Explanation," Okashira Kyu's "Ming Code Translation and Annotation," and Ogiso Sorai's "Ming Code National Character Explanation." These works influenced the development of Japan's legal system.

The Tang Code was also adopted during the Goryeo Dynasty in Korea. According to the "Criminal Law Records" in the "Goryeo Annals," the Goryeo Dynasty's laws and regulations were mostly modeled after those of the Tang Dynasty. As for criminal law, the Tang Code was also adopted, and applied in accordance with the circumstances of that time. There were a total of 71 articles, including two articles on the regulations of judicial officials, 12 articles on general provisions, four articles on roles and responsibilities of emperor bodyguards in safeguarding and accessing control of royal palace and families, 14 articles on regulations regarding officials, four articles on households and marriage, three articles on stables and storehouses, three articles on unauthorized activities, six articles on theft and robbery, seven articles on disputes and lawsuits, two articles on fraud and deception, two miscellaneous articles, and eight articles on fugitives and criminal cases. The Tang Code, after being simplified, still had a legal basis and was put into effect." [9] During the Joseon Dynasty, the "Great Ming Code" was also used as the basis for conviction and sentencing. When King Taejo of Joseon ascended the throne, he declared, "During the late period of the previous dynasty, there was no set law... From now on, all criminal cases outside of the Korean capital must be judged according to the 'Great Ming Code.'" [10] In the Taejo period, he also ordered officials to compile the "Jingguo Dadian" (a code) based on the "Great Ming Code."

During the Ly Dynasty, Later Le Dynasty, and Nguyen Dynasty, Vietnam successively introduced their own laws by imitating the Tang Code, the Great Ming Code, and the Great Qing Code. After the establishment of the Later Le Dynasty (1428–1789), the nearly-800-year-old Tang Code with Commentaries was still imitated in legislation. In the early years of the Later Le Dynasty, the "Guochao Criminal Law" (also known as the "Hongde Criminal Law," "Hongde Code," or "Le Dynasty Criminal Law") was promulgated, with 13 chapters and 722 articles, divided into: General Provisions; Palace Guards Behavior Regulations; Disciplinary Actions

8 Chronicles of Japan, Article 31, cited from YANG Honglie, 中国法律在东亚诸国之影响 (*The Influence of China's Law on East Asian Countries*), China University of Political Science and Law Press, at 176 (1999).

9 Korean Studies Literature Research Institute, ed.，高丽史・刑法志 (*Criminal Law of Goryeo History*), Asia Culture Society, at 833 (1990).

10 朝鲜王朝实录・太祖实录 (*Annals of the Joseon Dynasty*), Annals of King Taejo, Year 1, July, Dingwei, Keijanggak edition of Seoul National University, South Korea.

for Civil Servants; Military Officer Training Regulations; Regulations on Marriage and Family; Regulations on Land and Property; Regulations on Adultery, Theft and Robbery, Disputes and Lawsuit, Fraud and Deception; Miscellaneous Laws; Arrest and Escape; and Sentencing. PAN Hui, a Vietnamese scholar, commented in the "Historical Records of Constitutional Law and Criminal Law" that "after the establishment of the Later Le Dynasty, the laws were updated, and the Hongde Criminal Law was modelled after the Sui and Tang codes. The regulations for punishment were uniform, with clear criteria for severity, and were followed throughout the dynasties, becoming part of the constitution."[11] The Nguyen Dynasty also modelled after the Great Qing Code and introduced the "Qinding Danam Code Cases," "Danam Cases Abstract," and other legal codes.

All these show that since the Tang Dynasty, the Chinese legal system, spread to the surrounding countries, and this was not coincidental.

Firstly, China and the neighboring countries had similar basic economic form based on agriculture, their political systems were all monarchies, and their guiding ideologies were Confucianism. These similarities were an essential basis for neighboring countries to introduce the Chinese legal system.

Secondly, the Confucianism of Three Cardinal Guides and Five Constant Virtues was elevated to the level of ethical morality in China, and incorporated into the legal system, forming an ethical-legal system that neighboring countries also appreciated. Even today, South Korea still values filial piety and family ethics, with larger families still emphasizing the eldest son as the legitimate representative for ancestor worship, highlighting the inherited principles of ethical morality and ethical-legal system as are embodied in the Tang Code.

Finally, the Tang Code was the pinnacle of ancient Chinese law. It inherited much from the laws of the Han and Sui dynasties, and later influenced the Ming and Qing dynasties. The main text of the Tang Code is the "Tang Code with Commentaries," which, together with the "Orders, Standards, Formats, Canons, Edicts, and Precedents," formed a complete system. The Tang Code had detailed regulations and offered explanations from various perspectives, making it easy to understand and to apply. The legal system, regulatory content, institutional structure, and interpretation of the Tang Code were all quite well-devised. Therefore, neighboring countries sent scholars to study the law in China during the Tang Dynasty. After returning to their countries, these scholars recommended that their rulers should imitate the Tang Code for developing their own laws. From then on, the Tang Code, and later the "Great Ming Code," and "Great Qing Code," became models for neighboring countries. However, due to different national conditions, neighboring countries also made changes when imitating these codes,

11 PAN Hui, citing the 历朝宪章类志 (*Classified Book of Constitutional Charters of Various Dynasties*), Vol. 33, 刑律志 (*Records of Criminal Law*), quoted from YANG Honglie's book 中国法律在东亚诸国之影响 (*The Influence of Chinese Law on East Asian Countries*), China University of Political Science and Law Press, at 427 (1999).

especially in the case of exile. According to the Tang Code, the maximum distance of exile was 1500kilometers, while neighboring countries appropriately shortened the distance according to their own conditions. The fundamental guiding principles, basic legal norms, judicial systems, and procedures of the Tang Code were all followed without major changes.

As demonstrated above, the deep affinity and long-lasting influence of the Chinese legal system on neighboring countries have eloquently illustrated that Chinese legal culture deserves its place as an outstanding contribution to the history of world legal culture.

III The Theory of the Origin of Chinese Law Is Empirical Evidence of Marxist Historical Materialism

The question of the origin of law is one of the core issues of Marxist historical materialism and a first step in studying Chinese legal history. According to Marxist theory, with the development of productive forces, surplus production surfaced, leading to the formation of classes and class struggles. To prevent both sides from being destroyed in the struggle, the state and law emerged to control the struggle. The Marxist description of the origin of law has been confirmed by Chinese legal history.

Even before the Xia Dynasty, the Miao tribes in the Yangtze River basin experienced class differentiation and struggle resulting from private ownership, as noted by DU Yu of the Jin Dynasty in his commentary on "Zuo's Chronicles (Zuo Zhuan)" that "the Miao Tribes are greedy for wealth and food," showing that the Miao Tribes had already undergone class differentiation. With class differentiation, class struggle was inevitable, leading to a situation where "the people were all deceitful, without any trustworthiness."[12] To control the resistance of the exploited, the Miao Tribes first freed themselves from religious restrictions and began to develop laws, prompting the "Miao people to avoid using spirits, but using punishment, creating the Five Punishments of cutting off nose, ears, genitals, head, feet, or tattooing on the face." KONG Yingda, a Tang Dynasty scholar, commented on this, "The Miao ruler practiced the evil of Chi-You-style terror punishment and refused to utilize kindness to civilize the people. Instead, they introduced heavy laws and the Five Punishments, saying that this is how justice should be administered."[13] It can be seen that the Miao Tribes had already introduced the Five Punishments (laws) in response to the needs of class struggle, and that the Miao leader, CHI You, can be considered a founder of Chinese law.

After a long war with the Yellow Emperor's Huaxia Tribes, the Miao Tribes were ultimately defeated and were either forced into exile in remote places or locally enslaved. However, the Huaxia Tribes adopted the Miao Tribes' laws and

12 RUAN Yuan, 吕刑 (The Heavy Punishments), in 十三经注疏·周礼注疏 (*Annotations and Commentary on the Thirteen Classics: Annotations on the Rites of Zhou*), Vol. 19, Zhonghua Book Company, at 247 (1980).

13 Id.

punishments, saying that "we defeat their tribes but introduce their laws." It was on the basis of the Miao punishments of cutting off noses and feet, and tattooing, that the Five Punishments of the Xia, Shang, and Zhou dynasties came into being.

During the reign of Emperor Shun, GAO Yao created laws, which were more widely spread than those of CHI You. Someone even mentioned it in the same breath with Confucius' classic works, saying: "Confucius passed down the classic works, while GAO Yao created laws, both intending to prohibit the people from doing wrong."[14]

If CHI You, the ancient Miao leader of the third Millennium BCE, made a harsh law, also the first to be created in China's legal history to control the class struggle, then GAO Yao's law during Yu Shun's reign (approximately 2200 BCE) provided a fresh input to the origins of law, namely, "using law to control chaos" and "creating precedents from cases."

GAO Yao, also known as JIU Yao, was a judicial officer of Emperor Shun. At that time, their country faced foreign-tribe invasion and domestic rebellions, resulting in social unrest. Emperor Shun appointed GAO Yao to restore law and order. The "Historical Records" compiled by SIMA Qian of the Western Han Dynasty stated: "Emperor Shun said: 'GAO Yao, we are disturbed by foreign invasions and domestic rebels. I am appointing you to be defense minister.'" GAO Yao fairly resolved the domestic contradictions, making the rebels surrender, and the people were satisfied. Moreover, GAO Yao streamlined his successful judicial experience in dealing with the unrest and used his experience to create law. GAO Yao's lawmaking story has been recorded in various historical books. According to the "Zuo's Chronicles (Zuo Zhuan)," quoting the "Book of Xia": "Robbery, embezzlement and homicide are punishable by death. This is how GAO Yao defined criminal law." The "Zhu Shu Ji Nian (Bamboo Annals)" of the Pre-Qin period recorded: "Emperor Shun ordered JIU Tao to create laws in the third year of his reign." In addition, according to the "Ji Jiu Zhang," a children textbook of the Western Han Dynasty, "GAO Yao's laws and regulations were used to maintain law and order and to distribute property equitably." During the reign of Emperor Taizong of the Song Dynasty, it was recorded in the "Taiping Yulan" that "the laws taught by JIU Yao were widely spread during the Han Dynasty under the direction of XIAO He." Although the characters used to describe the laws created by GAO Yao were not consistent, according to the "Er Ya Shi Gu,"刑(*xing*) means "law" and 律 (*lü*) also means "law." The "Origin of Characters" also said that 法 (*fa*) means "law." It can be seen that the three characters have the same meaning and can be used interchangeably.

As a judicial official, GAO Yao made law by searching through cases and selecting those with representative significance with general guiding principles. This lawmaking process based on precedents was widely

14 FAN Ye, 张敏传 (Biography of ZHANG Min), in 后汉书 (*Later Han Book*), Vol. 44, Zhonghua Book Company, at 1503 (1965).

recognized by the legislative practices of later dynasties.

As can be seen from the above, GAO Yao made three types of laws in the fierce struggle for subduing "barbarians and bandits," thus elevating individual judgments to generalized judgments regarding "the punishment of embezzlement, fraud and murder."[15]

During the Spring and Autumn period, GUAN Zi said in discussing the role of law that "the purpose of law is to determine status and to resolve disputes,"[16] indicating the origin of law was consistent with the actions of CHI You in punishing offenders and of GAO Yao in making laws. The term "establishing order" referred to the establishment of a hierarchical system that defined the status and rank of individuals, and the formulation of legal rights and obligations corresponding to these ranks for maintaining order and preventing disputes. This involved dividing individuals into different social classes or ranks and assigning them specific roles and responsibilities. By doing so, people could know their place, respect their duties, and avoid conflicts.

In summary, both CHI You and GAO Yao were the earliest lawmakers in China. Although their governance and lawmaking methods were different, they both enacted laws to control the development of class contradictions in a complicated and unsettled background. Their lawmaking process conformed to the Marxist view of law and to the actual history of the Chinese legal system. However, no origin of foreign law was clearly recorded as the law of Chinese legal system, let alone the Western explanation of the origin of law through religious theology. This further demonstrates the rationality of Chinese legal culture.

IV The Role of Music in Comprehensive Governance

According to ancient literature, during the reign of Emperor Shun, music was already being used as a means to educate the people, and Kui was appointed to hold the special official position in charge of music. The emperor said, "Kui! I appoint you to be in charge of music, to ensure that musical instruments made of eight kinds of materials can work in harmony, avoiding any discord between them, and creating an accord between humans and heavens."[17] SIMA Qian, a renowned historian of the Western Han Dynasty, explained that in the past, Emperor Shun made the five-stringed musical instrument to be played for the song of Nanfeng (south wind) in honor of clear and honest officials, while Kui composed music for rewarding virtuous lords. Therefore, the emperor rewarded virtuous and excellent officials

15 RUAN Yuan, 昭公十四年 (Fourteenth Year of Duke Zhao), in 十三经注疏·春秋左传正义 (*Annotations and Commentaries on the Thirteen Classics: Commentary on the Zuo Zhuan of the Spring and Autumn Annals*), Vol. 47, Zhonghua Book Company, at 2076 (1980).

16 LI Xiangfeng,七臣七主 (Seven Ministers, Seven Kings), in 管子校注 (*Annotated Edition of the Guanzi*), Vol. 17, edited by LIANG Yunhua, Zhonghua Book Company, at 998 (2004).

17 RUAN Yuan, 舜典 (Shun Code), in 十三经注疏・尚书正义 (*Annotations and Commentaries on the Thirteen Classics: Commentary on the Book of Chow*), Vol. 3, Zhonghua Book Company, at 131 (1980).

with music. Only when their virtues were excellent and education was respected, their harvest abundant on time and then would they be rewarded with music."[18]

After the Western Zhou Dynasty was founded, the Duke ZHOU inherited the experience of King Wen's practice of "using martial music and rites to serve the heavens"[19] and designed a program for integrating rites, music, politics, and law into governance. There was a close internal and mutual connection between rites and music. Rites directed music, while music was an art form that strengthened the function of rites and served to categorize rites. Following the state structure of the Western Zhou Dynasty, which consisted of the emperor, ministers, officials, and the people, the music administration adopted the same pyramidal structure, having different music for the emperor, lords, officials, and ordinary people. The combination of rites, music, politics, and law was known as the "four-path governance." The *Book of Music* had an incisive argument about this governance: "Rites guide the heart of the people, music harmonizes their voices, politics unites their actions, and law prevents their wickedness. The four-path governance, integrating rites, music, politics, and law, is harmonious and consistent with the hearts of the people, thus emerging as the way to govern."[20] The *Book of Music* added, "As long as proper rituals and rites are observed, people's sentiments are harmonized, good governance policy and measures are implemented, and laws are enforced to prevent wrongdoing, there would be right alignment between rites, music, law, and governance and would be no any deviation, then the king can establish a just and effective governance system."[21]

In the Confucian classics, music is one of the Six Classics – the book of Poems, History, Rites, Changes, Music, and Spring and Autumn Annals. However, the *Book of Music* was destroyed in a Qin Dynasty fire. Nevertheless, pre-Qin Confucians discussed the role of music as they held high its educational role.

Confucius attached great importance to the educative role of music and regarded it as a sacred art. During his teaching career, he made the Six Arts (rites, music, archery, riding, writing, and mathematics) the main subjects of his teachings, indicating that he was also a sage of music. Confucius once told his disciples, "Start with poetry, progress with rites, and succeed with music." Hearing the music of Shao State,[22] he appreciated it so

18 史记 (*Historical Records*), "Nanfeng" is a kind of poem written by Shun. According to Confucius Family Words: Distinguishing Music, "The former Shun played the five-stringed piano and wrote the poem Nanfeng. His poem says: 'The south wind can relieve the anxiety of our people; When the south wind blows, you can enrich the wealth of our people.'" Line decoration refers to the ranks of dance teams. Book of Rites and Music and History and Music have the same records: "Therefore, those who govern the people's labor, their dance lines are far away; Those who govern the people and escape, their dance lines are short." ZHENG Xuan's note: "The people's labor is thin, the distance is far, and there are few dancers; The people are prosperous, the people are close, and there are many dancers." KONG Yingda Shu: "Stuffing means that it is also ... it is called gathering."

19 DONG Zhongshu, 三代改制质文 (Three Generations of Restructuring Quality), in 春秋繁露 (*Spring and Autumn Period Stories*), Vol. 7, Shanghai Ancient Books Publishing House, at 41 (1989).

20 SIMA Qian, 乐书 (The Book of Music), in 史记 (*Historical Records*), Vol. 24, Zhonghua Book Company, at 1179 (1959).

21 Id. at 1186.

22 RUAN Yuan, 泰伯 (Peacemaker TAI Bo), in 十三经注疏・论语注疏 (*Annotations and Commentaries on The Thirteen Classics: Commentary on the Analects of Confucius*), Vol. 8, Zhonghua Book Company, at 2487 (1980).

much,[23] saying "The Shao music is so excellent and beautiful."[24] He was so absorbed in it that he "did not even appreciate the flavor of meat for three months."[25] He further said with deep emotion that "he had never expected the music to be so fascinating and touching."[26] Confucius believed that music served his theory of benevolence. He said, "What is the use of rite if people do not have benevolence? What is the use of music if people do not have benevolence?"[27] Faced with the profound changes and the downfall of rite and music in the Spring and Autumn period, Confucius was very sentimental, "Should there be no rite or music, punishments would not be effective in governance, and if the punishment is not right, then people would be at a loss."[28]

Because music can cultivate and purify people's hearts and minds, enhance the unity and affinity among the people, and help refine customs and stabilize the country, Confucius said, "Nothing is better than music in bettering customs and habits, and nothing is better than rites in governing the people."[29] Therefore, he opposed the sensual and decadent new music of State Zheng. When YAN Hui, one student of Confucius, asked Confucius how to run State Zheng, Confucius replied, "Follow the natural season to administer the farming; be frugal; do not believe in any one-sided story; compose benevolent music to cultivate people's hearts and minds. The new music of State Zheng, so obscene, fails to nurture the people's minds but harms the people's hearts."[30] In *The Analects of Confucius*, Confucius repeated his disgust for the new music of State Zheng, "I hate the purple color for confusing the decent color, and I hate the Zheng music for disturbing elegant music."[31]

Mencius shared the same view on music as Confucius, appreciating its educational role. He said, "Words of benevolence are not as deep-touching as music of benevolence that touches the heart. Good governance is not as good as good teaching that touches people's hearts. Good governance makes people fear, good teaching makes people care. Good governance gains people's wealth, good teaching gains people's hearts."[32]

XUN Zi further developed Confucius'

23 RUAN Yuan, 述而 (Self-Evaluation of Confucius), in 十三经注疏・论语注疏 (*Annotations and Commentaries on the Thirteen Classics: Commentary on the Analects of Confucius*), Vol. 7, Zhonghua Book Company, at 2482 (1980). "Shao" refers to Shao music, which was the music of the time of Emperor Shun.

24 RUAN Yuan, 八佾 (Ba Yi), 十三经注疏・论语注疏 (*Annotations and Commentaries on the Thirteen Classics: Commentary on the Analects of Confucius*), Vol. 3, Zhonghua Book Company, at 2469 (1980).

25 See RUAN, fn. 23 at 2482.

26 Id.

27 See RUAN, fn. 24 at 2466.

28 RUAN Yuan, 子路 (Zi Lu), in 十三经注疏・论语注疏 (*Annotations and Commentaries on the Thirteen Classics: Commentary on The Analects of Confucius*), Vol. 13, Zhonghua Book Company, at 2506 (1980).

29 RUAN Yuan, 广要道 (Guang Yao Dao), in 十三经注疏・孝经注疏 (*Annotations and Commentaries on the Thirteen Classics: Commentary on the Xiaojing*), Vol. 6, Zhonghua Book Company, at 2556 (1980).

30 RUAN Yuan, 卫灵公 (King WEI Ling), in 十三经注疏・论语注疏 (*Annotations and Commentaries on the Thirteen Classics: Commentary on The Analects of Confucius*), Vol. 15, Zhonghua Book Company, at 2517 (1980).

31 RUAN Yuan, 阳货 (Yang Huo), in 十三经注疏・论语注疏 (*Annotations and Commentaries on the Thirteen Classics: Commentary on the Analects of Confucius*), Vol. 17, Zhonghua Book Company, at 2525 (1980).

32 JIAO Xun, 尽心上 (Jinxin Shang), in 孟子正义 (*The Annotation of Mencius*), Vol. 26 , edited by SHEN Wenzhuo, Zhonghua Book Company, at 897 (1987).

and Mencius' views on music and introduced a systematic Theory of Music. He believed that "Music is happiness, which is an emotion that humans cannot avoid, so people cannot live without music. Being with an old friend must have the company of music."[33] However, if one only indulges in music without being virtuous, then one would inevitably face a disorder. Therefore, "The ancient kings detested disorder, so they established elegant and noble music to guide people. They made the music enjoyable, not indulgent, and the lyrics clear, not confusing... the music was so good that it could touch the goodness in people's hearts and prevent the spread of evil and of corrupt energy." He regarded these words as "the principle for the ancient kings to create music."[34]

In addition, XUN Zi elaborated "the art of music established by the ancient kings" had two purposes: the first purpose was to achieve the harmony of ancestral temples, families, and villages through music: "music is the process of determining other harmonies based on a principal melody, adjusting the rhythm with various instruments, and playing together to create a harmonious composition of multiple sounds. It is powerful enough to lead by example and to regulate various changes." The second purpose was to use elegant music to cultivate and educate, allowing people to acquire aspirations and broaden their minds." "Using music for external conquest, there is no one who will not obey; using music to promote rite and internal respect, there is no one who will not accept." "Therefore, music is a tool for unity, a key to harmony and peace, and something that human emotions cannot be separated from."[35]

XUN Zi also distinguished the functions of rite and music. "The function of music is to promote harmony in interpersonal relationships, while the function of rite is to establish order for social hierarchy. Therefore, the principles of rite music can govern people's thoughts. The action of music is to deeply touch and greatly change people's hearts and minds, while the eternal principle of rites serves to promote sincerity and eliminate insincerity."[36]

SIMA Qian further argued that promoting rites and music could lead to governance through humility and tolerance, and could ultimately govern the country. He said that the purpose of rites was to preserve differences, that is, to distinguish between the noble and the humble, and the purpose of music was to seek common ground, that is, to ease the contradiction between the upper and lower levels and return to harmony. This is what is meant by, "Music unites; rite divides; unity leads to affection; differentiation leads to respect." "When rites and righteousness are established, then the distinction between high and low is set; when music and literature are in harmony, then the upper and lower classes are in concord; when likes and dislikes are clearly distinguished, then the worthy and unworthy are set apart; when punishment and reward are justly administered, then the

33 WANG Xianqian, 乐论 (On Music), in 荀子集解 (*Annotations on the Collected Works of XUN Zi*), Vol. 14, edited by SHEN Xiaohuan & WANG Xingxian, Zhonghua Book Company, at 379 (1988).
34 Id.
35 See WANG, fn. 33 at 379–380.
36 See WANG, fn. 33 at 382.

government is equitable. With benevolence to love them and justice to regulate them, the people are governed properly." He added, "Music originates from the heart, while rite is manifested in external behaviors. Music can influence people unconsciously, while rite can establish a system of rituals. The best music must be simple and easy to understand, and the best rite must be plain and unadorned. When music reaches the heart, people will have no resentment, and when rite is practiced universally, people would have no conflicts. To govern with rite means to implement the principles of music and rite. When the common people do not rebel, and the feudal lords all submit willingly, without the use of force or various forms of punishment, the people will have no worries, and the emperor will not be angered. This indicates that music is universally practiced. When fathers and sons are affectionate towards each other, the order between elders and juniors is clear, and people throughout the country respect each other. if the emperor can achieve this, then that rite is universally practiced and the social order would be good."[37] "If one can understand both the rites and music, then they are considered to have virtue. Virtue means to obtain what is desired ... therefore, the ancient kings established the rites and music that were not to satisfy people's sensual desires, but to educate the people and correct their deviations from the righteousness by teaching them to distinguish between good and evil."[38]

The positive effect of combining rite and music in governing is described in the "Record of Rites and Music" in the Book of Han: "Music governs the internal and creates harmony, while rite cultivates the external and creates distinction. Harmony creates affection and respect, while distinction creates awe and reverence. When everyone practices humility and deference, the world will be in order. This is the essence of rite and music."[39]

In later dynasties, the promotion of rite and music was acknowledged as a sign of good governance, making people live in harmony, improving customs, adjusting their minds, reducing conflicts and avoiding disputes.

SIMA Qian drew an important conclusion from the role of music in governing the country in the Confucianist pre-Qin period, and from the rise of elegant music among victorious states and the decline of those who liked licentious music among defeated states during the Warring States period. "The creation of music is associated with social politics."[40] He divided music into three categories: music for governing, music for chaos, and music for a dooming nation, each with a corresponding melody that is suitable for political prosperity or decline. "Sound is what touches people's hearts. Emotions are expressed through sound, and sound is transformed into music. Therefore, music for governance is peaceful and harmonious, music for chaos is full of resentment and anger, and

37 SIMA Qian, 乐书 (Book of Music), in 史记卷 (*Historical Records*), Vol. 24, Zhonghua Book Company, at 1187–1188 (1959).
38 Id. at 1184.
39 Ban Gu, 礼乐志 (Rites and Music), in 汉书 (*Book of Han*), Vol. 22, Zhonghua Book Company, at 1028 (1962).
40 See SIMA, fn. 37 at 1181.

music for a dooming nation is filled with sorrow and reflection, as its people are in distress."[41] The Book of Rites further explains, "By examining the sound, one can understand the melody. By examining the melody, one can understand the music. By examining the music, one can understand politics, and thus, a well-governed society can be achieved."[42]

It is because "music creation is closely related to governance" that during the early Shang Dynasty, the government established laws and regulations that specifically stated: "Anyone who persistently dances in the palace and sings in a drunken state in their own home, is said to be practicing witchcraft ...If any of the ten forbidden practices are committed, whether by a nobleman or a commoner, their family will be destroyed; if the ruler of a state commits one of them, the country will perish. If officials do not rectify this, they will be punished severely."[43]

The reason for the rise and fall of Emperor Shun and Emperor Zhou can also be seen from the music they enjoyed. "Historical Records: The Book of Music" says, "Music comes from the heart of humanity." "Therefore, those who do good will be rewarded by heaven with happiness, and those who do evil will be punished by heaven with calamity. This is natural." "When Shun played the five-stringed instrument and sang the South Wind, the world was in order; when Zhou played the music of the northern border in the morning, he died and his country perished. How broad was Shun's path, and how narrow was Zhou's path? The Song of the South Wind is a sound that nurtures and grows. Shun loved it, and his music was in harmony with heaven and earth. He won the hearts of the world, so his world was in order. As for the music of the northern border in the morning, it was untimely, and it was for the defeat in the rude border. Zhou loved it, but it was out of step with the rest of the domination. The lords did not support him, the people did not love him, and the world turned against him. As a result, he died and his country perished."[44]

During the Warring States period, WEI Wenhou, who was known for his reforms, was fond of the new music of State Zheng and State Wei. He asked ZI Xia, one of the ten disciples of Confucius, about this new music. ZI Xia replied, "The new music is vulgar and obscene, with intermittent lewd sounds. It is mixed with the sounds of clowns and young girls, and people cannot distinguish between father and son. It is not fit for conversation or for passing on ancient traditions. This is the essence of the new music."[45] WEI Wenhou then asked where these lewd sounds came from, to which ZI Xia replied, "The music of Zheng is too indulgent and promotes licentiousness; the music of Song is like the cooing of a female bird, promoting lust; the music of Wei is too hurried and causes anxiety; the music of Qi is too flamboyant

41 See SIMA, fn. 37 at 1181.
42 RUAN Yuan, 乐记 (Book of Music), 十三经注疏・礼记正义 (*Annotations and Commentaries on the Thirteen Classics: Rites and Music*), Vol. 37, Zhonghua Book Company, at 1528 (1980).
43 RUAN Yuan, 伊训 (Education on Music), in 十三经注疏・尚书正义(*Annotations and Commentaries on the Thirteen Classics: Book of Documents*), Vol. 8, Zhonghua Book Company, at 163 (1980).
44 See SIMA, fn. 37 at 1235.
45 See SIMA, fn. 37 at 1222.

and promotes arrogance. All four are indulgent in appearance but harmful to virtue. That is why they are not used for ceremonies."[46] SIMA Qian explained that "The rise of Zheng music was due to the lack of proper governance." "The music of Zheng and Wei is the music of chaos, akin to slowness." "The music of elegance and praise can help to maintain social order, while clamorous and noisy music can inspire soldiers to fight bravely. The music of Zheng and Wei can stir up people's emotions and cause them to indulge."[47] The Book of Rites also states: "Listening to the sound of elegant and refined music can broaden one's aspirations and enlighten one's mind." KONG Yingda's annotation explains: "Elegant music is used to promote righteousness, while praise is used to commend success. By listening to their sounds, one can avoid lewdness and evil, thus broadening one's aspirations and enlightening one's mind."[48]

LI Shimin, Emperor Taizong of the Tang Dynasty, also revealed the various social problems caused by "lack of rites," and used the words of Confucius to explain the significant value of rite and music in governing the people and refining the customs. In the "Edict on the Promotion of Rite and Music," he said: "If the rites of marriage are abolished, the relationship between husband and wife will be hindered, and the crime of immorality will increase; if the rites of drinking in the village are abolished, the order of seniority will be disrupted, and the number of disputes will increase; if the rites of mourning and sacrifice are abolished, the gratitude between relatives will be weakened, and the number of people who forget their ancestors and elders will increase; if the rites of court and diplomatic visits are abolished, the positions of monarchs and ministers will be lost, and the tendency for aggression will arise. Just like that Confucius said: "There is nothing better than rites to govern the people and nothing better than music to refine customs." Rites regulate the hearts of the people, music harmonizes the speeches of the people, and politics govern the social customs and punishment prevents any wrongdoings. If rite, music, and punishment are all in harmony, then governance succeeds. Music comes from the heart of humanity, and rites are formed from behaviors. Only through rites and music can we govern the people and refine customs through courtesy and modesty."[49]

During the Tang Dynasty, the poet LIU Yuxi also said: "Music and politics go hand in hand."[50] In the standards for examining and selecting officials in the Tang Dynasty, known as the "Four Virtues

46 See SIMA, fn. 37 at 1224.

47 See SIMA, fn. 37 at 1176. The music of State Zheng and State Wei, a folk song that contrasted with the elegant and solemn music of the Song state, was considered a decadent and frivolous style of music.

48 Ruan Yuan, 乐记 (Book of Music), in 十三经注疏・礼记正义 (*Annotations and Commentaries on the Thirteen Classics: Book of Rites and Music*), Vol. 39, Zhonghua Book Company, at 1545 (1980).

49 DONG Gao et al, eds.，太宗三・颁示礼乐诏 (Emperor Taizong III: Decree on the Presentation of Rites and Music), in 全唐文 (*Complete Literature Works of Tang Dynasty*), Vol. 6, Zhonghua Book Company, at 70 (1983).

50 LIU Yuxi, 集纪・唐故尚书礼部员外郎柳君集纪 (Collection Records: Collection Records of Former Minister of Rites and Assistant Officer of the Ministry of Rites), in 刘禹锡集笺证 (*Annotations and Evidences of Liu Yuxi's Collected Works*), Vol. 19, edited by QU Tuiyuan, Shanghai Ancient Books Publishing House, at 513 (2009).

and 27 Excellences," provisions were made for candidates for roles as music officials: "The music should be harmonious and rhythmic, and the musicians should be the best."[51] In the fourth-year reign of the Jin Dynasty under Emperor Taihe, the examination system was introduced, modeled after the Tang law and renamed as the "Four Virtues and 17 Excellences." The first excellence was "promoting the prosperity of rites and music, eliminating corrupt practices, and promoting good governance and moral education."[52]

The Confucian criticism of new music served the political ideals of self-restraint, restoration of rites and respect for tradition. However, the Confucian theory of music is rational and specific to specific situations, and still has historical significance for reference.

In summary, music was a special cultural phenomenon in ancient China, and was closely related to political culture and legal culture. It could improve people's temperament and social customs, and ensure social stability and good governance. With the passage of time, the nature and role of ancient music changed. However, the view that "the way of music creation is the same as political governance"[53] is still an enduring principle. The reason why Chinese legal culture has lasted for 5000 years without interruption is not only because of its advanced nature, but also because of the spirit of the Chinese nation contained within it. This spirit is the backbone of the Chinese nation and the soul of Chinese legal culture. When the excellent factors of the Chinese national spirit are incorporated into music, it produces immortal works such as "The March of the Volunteers," "The Yellow River Cantata," "Ode to the Motherland," "The Long March Songs," and "In Praise of the Red Plum Blossoms."

V The Rites of Zhou—The Ancient Chinese Classic on Governing a Country

The Book of Rites, compiled by Confucian scholars during the Han Dynasty, is the first of the Confucian canon. It covers a wide range of subjects and systems of states: politics, law, education, rite and music, military and punishment, taxation and finance, food and clothing, temples and carriages, agriculture, commerce, medicine, divination, and various regulations and customs. It can be regarded as the "great canon of governance" in ancient China. While the Confucian criticism of new music served their political ideals of self-discipline and adherence to ancient customs, their philosophy of music remained rational and was tailored to the specific context of their times. Therefore, *The Book of Rites* still has significance for us today.

Firstly, *The Book of Rites* (Rites of Zhou) promoted a unified national system with the king as the center. It stated at the

51 LI Linfu et al., 尚书吏"考功郎中、员外郎"条 (Ministry of Personnel of the Imperial Secretariat, Assistant in the Office of Merit and Assistant Officer), in 唐六典 (*Six Codes of the Tang Dynasty*), Vol. 2,edited by CHEN Zhongfu, Zhonghua Book Company, at 42 (2014).

52 TUO Tuo, 百官志一 (Book of the Hundred Officials), in 金史卷五十五 (*The History of Jin Dynasty*), Vol. 55, Zhonghua Book Company, at 1227 (1975).

53 See SIMA, fn. 37 at 1181.

beginning of each chapter, "Only the king can establish a state, distinguish proper positions, administer the state, and appoint officials with specific roles and responsibilities to serve the people to the utmost." The statement "Only the king can establish a state" illustrated that the king and the state were integrated and the same, with the king as the ruler of the state. The statement that only the king could "distinguish proper positions and administer the state" indicated that the king was in the center, ruling the whole state, as described in the "Yang Quan" chapter of HAN Fei: "Affairs from everywhere in the state must be handled from the center. The wise ruler controls the center, and all the rest follows him." [54] However, the king, with the highest central power, still needed to appoint officials with specific roles and responsibilities to govern the state and the people.

Secondly, *The Book of Six Codes* described the matter of appointing six ministers in the name of heaven, earth, spring, summer, autumn, and winter, each with specific roles and responsibilities. The Heaven was the Prime Minister, who "leads his subordinates to run the country, and assists the king in dealing with neighboring countries evenly."[55] The so-called "state governance" referred to what had been prescribed in the Code of Governance in The Book of Six Codes: "to govern the state, manage officials, and regulate the people."[56] The Earth was the Minister of Education, "leading his subordinates and managing the state's education, assisting the king in stabilizing and pacifying the state."[57] The so-called "state education" referred to what had been prescribed in the Code of Education in the Book of Six Codes, aiming "to pacify ties with all other states, educate officials, and make the people obedient."[58] The Spring was the Minister of Rites, "leading his subordinates and regulating the state's rites, assisting the king in harmonizing the state."[59] The so-called "state rite" referred to what had been prescribed in the Code of Rite in the Book of Six Codes and presented the need "to harmonize the ties with all other states, govern all officials, and harmonize the ties with the people."[60] The Summer was the Minister of State Defense, "leading his subordinates and managing the state's politics, assisting the king in maintaining peace with other states."[61] The 'state politics' in the Code of Politics in the Book of Six Codes served "to ensure political fairness with all

54 WANG Xianshen, 扬权 (Exalting Power), in 韩非子集解 (*Annotations on the Collected Works of HAN Feizi*), Vol. 2, edited by ZHONG Zhe, Zhonghua Book Company, at 44 (1998).

55 RUAN Yuan, 天官冢宰 (Prime Minister), in 十三经注疏・周礼注疏(*Annotations and Commentary on the Thirteen Classics: Annotations on the Rites of Zhou*), Vol. 1, Zhonghua Book Company, at 639 (1980).

56 RUAN Yuan, 天官冢宰・大宰 (Prime Minister), in 十三经注疏・周礼注疏 (*Annotations and Commentary on the Thirteen Classics: Annotations on the Rites of Zhou*), Vol. 2, Zhonghua Book Company, at 645 (1980).

57 Id.

58 See RUAN, fn. 56.

59 RUAN Yuan, 春官宗伯 (Minister of Rites), in 十三经注疏・周礼注疏 (*Annotations and Commentary on the Thirteen Classics: Annotations on the Rites of Zhou*), Vol. 17, Zhonghua Book Company, at 752 (1980).

60 RUAN Yuan, 夏官司马 (Minister of State Defense), in 十三经注疏・周礼注疏(*Annotations and Commentary on the Thirteen Classics: Annotations on the Rites of Zhou*), Vol. 28, Zhonghua Book Company, at 830 (1980).

61 See RUAN, fn. 56.

other states, clean and honest behavior of officials, and equal distribution of burdens and duties among the people."[62] The Autumn was the Minister of Justice, "leading his subordinates and enforcing the state's laws, assisting the king in punishing the evil and rebellious."[63] The so-called "state justice" referred to what had been prescribed in the Code of Justice in the Book of Six Codes, and served "to prohibit rebellion of any states, punish law-breaking officials, and rectify the people."[64] The Code of Winter on the Minister of Works which was not made initially, and the Han Dynasty's *The Book of Workmanship and Technology* (Kao Gong Ji) was used to fill the gap of the Book of Six Codes.

The Book of Rites uses the names of the four seasons and the elements of heaven and earth to describe different officials, reflecting the naturalistic idea of harmony between humans and nature that existed in the pre-Qin period. The regulations for officials and their positions, including both superior and subordinate officials, with specific responsibilities for the total workforce of tens of thousands, as found in the "Book of Rites," forms a vast system. It was rare to have such a clear and extensive system in the distant past. The six officials established in the "Book of Rites" became the historical origin of the six central departments (personnel, revenue, rites, army, justice, and works) after the Tang Dynasty; the affairs handled by the six departments were generally like those of the six officials in the "Book of Rites." This system continued until the reforms during the late Qing Dynasty.

Thirdly, the Prime Minister evaluated the performance of the officials based on the *The Book of Six Codes*. The evaluation process involved holding a meeting at the end of each year where officials were required to report on their accomplishments; every three years, a major evaluation known as the "Great Assessment" was conducted to determine promotions and demotions.[65] If officials were found any wrongdoing, they would be punished according to the law, known as the "regular punishment."[66]

Fourthly, at the grass-roots organizations, the township officials were responsible for governmental, civil, and judicial affairs, and applied 12-article regulations to educate and manage people. "1. By using the ritual of sacrifice, people are taught to respect, and they will not be careless or sloppy in their work. 2. By using customs such as archery, drinking, and wedding ceremonies, people are taught to be humble towards each other, then there will be less infighting among them, and a culture of courtesy will gradually emerge in society. 3 By using ceremonies such as weddings, funerals, and sacrifices, people are taught to love and care for each other, and there will be less resentment and hatred among them. 4. By using ritual music and

62 RUAN Yuan, 秋官司寇 (Minister of Justice), in 十三经注疏・周礼注疏(*Annotations and Commentary on the Thirteen Classics: Annotations on the Rites of Zhou*), Vol. 34, Zhonghua Book Company, at 867 (1980).
63 See RUAN, fn. 56.
64 See RUAN, fn. 56 at 650.
65 RUAN Yuan, 地官司徒・大司徒 (Minister of Education), in 十三经注疏・周礼注疏 (*Annotations and Commentary on the Thirteen Classics: Annotations on the Rites of Zhou*), Vol. 10, Zhonghua Book Company, at 708 (1980).
66 Id. at 703.

ceremony to transform human nature, people are taught to live in harmony with each other, and there will be less disobedience and stubbornness among them. 5. By using distinctions of rank, through ritual and rite, to differentiate between superior and inferior, a moral order of benevolence and righteousness is established, so that people do not act beyond their station. 6. By using customs to educate people to maintain social stability, people abandon their evil thoughts and live in peace and happiness. 7. By using laws and regulations to educate people on what they should not do, people consciously abide by rites and laws, and they no longer act arbitrarily or violently. 8. By using oaths and admonitions to teach people to be cautious and cherish, people will not be lazy or idle. 9. By using institutions to constrain and educate people to restrain themselves, people will be content and not covetous. 10. By using the principles of human society to educate people to master skills and exert their talents, people will not be negligent. 11. By awarding titles according to a person's virtuous and moral level, people carefully cultivate their own morals. 12. By setting the amount of salary according to a person's merits and achievements, people devote themselves to establishing achievements." [67]

In addition, a local governor was also responsible for managing the marriage of the residents under his jurisdiction to maintain the ethical order. "A special position in the local government is established to manage matchmaking between men and women. A baby must register with the government three months after birth and have their name recorded in the registry, in preparation for marriage when they reach the appropriate age (30 for men and 20 for women). According to the law, during the spring season, free love and marriage between men and women are not absolutely prohibited, but during other seasons, marriage must be arranged by parents and matchmakers. All marriage-related activities, including informal betrothal, must be reported and registered with the government, and those who violate this law will be punished. For those who are over the appropriate age for marriage and have not yet married, as well as widows and widowers, the local government will force them into marriage through the supervision of matchmakers. and the amount of dowry for marriage must not exceed the specified amount. It is forbidden to marry men and women who have died young. Any disputes caused by promiscuity should be dealt with by judicial officials."[68]

Fifthly, *The Rites of Zhou* stipulated a series of legal principles. The first principle was enforcing laws differently in the entire country for three different stages: "For newly established states, laws are enforced leniently; for stable states, laws are enforced moderately; and for states in chaos, laws are enforced harshly."[69] This was the principle used to determine how to apply a law by distinguishing different political situations. In the early Ming Dynasty, the

67 See RUAN, fn. 65 at 722–723.
68 See RUAN, fn. 62 at 870.
69 ZHANG Tingyu, 刑法志 (Law and Punishment), in 明史 (*History of Ming Dynasty*), Vol. 93, Zhonghua Book Company, at 2283 (1974).

rule of law was strict, and Emperor ZHU Yuanzhang said, "In times of chaos and disorder, I have no choice but to enforce severe punish-m.ents."[70] His practice had a long-standing influence.

The second principle was promoting education of the law. Every year in January, specialized officials were sent around the state to promote law education, saying "Those who violate the law shall be punished according to the law," making the people fear the punishment and respect the law.

The third principle is listening to and analyzing a lawsuit in five ways: firstly, listening to the words spoken; secondly, observing the facial expressions of the parties involved; thirdly, paying attention to the breath of the parties involved; fourthly, listening to the voices of the parties involved; and finally, observing the gaze of the parties involved." ZHENG Xuan, a Confucian scholar of the Eastern Han Dynasty commented: "If a person's words are not direct, he may become agitated. If a person's facial expression is not direct, he may blush. If a person's physical demeanor is not direct, he may start to breathe heavily. If a person is not listening or paying attention directly, he may become confused. If a person's eye contact is not direct, he may blink frequently." This is the earliest application of criminal psychology in justice.[71]

The fourth principle is drawing a distinction between criminal lawsuits and civil lawsuits. *The Rites of Zhou* indicates a need "to try civil cases using the contract established by both parties in the lawsuit, while both the plaintiff and the defendant are required to participate in the court proceedings in criminal cases." ZHENG Xuan noted: "Civil lawsuits refer to disputes over property or money, while criminal lawsuits involve accusations of wrongdoing or criminal activity." He also commented that "Disputes over criminal charges are called criminal cases, while disputes over property or money are called civil cases."[72]

The fifth principle concerns establishment of lawsuit procedure. Both parties to the lawsuit must appear in court and pay the lawsuit fees. In civil lawsuits, deeds and contracts are the basis of evidence. "All cases of financial disputes are resolved through mediation and negotiation." Nobles and high officials were allowed to have their family members or children act as their proxies in court, while "Ordinary husbands and wives should not sit in on legal proceedings." Before rendering a judgment, the judge should listen to the opinions of court officials and the people from all walks of life. The so-called "three interviews mean that in common people's lawsuits, a judge should first interview court officials, then interview local officials, and finally interview the common people. The judge should listen to the opinions of the people to determine the appropriate punishment." [73] Similar procedures with the three interviews

70 RUAN Yuan, 秋官司寇・小司寇 (Minister of Justice), in 十三经注疏・周礼注疏 (*Annotations and Commentary on the Thirteen Classics: Annotations on the Rites of Zhou*), Vol. 35, Zhonghua Book Company, at 873 (1980).

71 See RUAN, fn. 62 at 870.

72 See RUAN, fn. 70 at 873–875.

73 RUAN Yuan, 秋官司寇・小司寇 (Justice Minister and Assistant Justice Minister), in 十三经注疏・周礼注疏 (*Annotations and Commentary on the Thirteen Classics: Annotations on the Rites of Zhou*), Vol. 35, Zhonghua Bookstore, at 873–875 (1980).

excluded have been exercised in all the subsequent judicial systems.

The series of legal systems stipulated in the above-mentioned "Rites of Zhou" fully demonstrate an invaluable legal civilization.

The book *The Rites of Zhou* fully presents the wisdom and ideals of the ancient sages. These wisdom and ideals originated from the experiences provided by the design of previous systems: institutional settings, official management, and judicial practices of previous dynasties. The experiences enriched the understanding of the authors of "Rites of Zhou," who then elevated them on the basis of existing prototypes to form the immortal masterpiece of national governance. The wide-ranging governance blueprint designed in the "Rites of Zhou" unquestionably shows the sophistication of the Chinese legal system, playing a pioneering role for future generations and leaving endless space for creativity. The post-Han-Dynasty legal history inherited and developed the "Rites of Zhou." The "Tang Liudian," modeled after the format of "Rites of Zhou," became an administrative code of the Tang Dynasty, with the aim of organizing and managing officials. The most complete administrative code in ancient China, the "Imperial Code of Great Qing Dynasty" of the Guangxu Reign, clearly stated in its "Preface" that "this Code primarily aims to appoint officials to oversee and manage various affairs and to assign different affairs to control specific officials, like the two influential ancient Chinese legal systems and bureaucratic management classics, the 'Zhou Liuguan' of Western Zhou Dynasty and the 'Tang Liudian' of Tang Dynasty, outlining a comprehensive system and a complete code of governance."[74]

VI Vision for Building the Chinese Legal System in the New Era

Legal systems around the world are all a reflection of each country's unique legal culture. The Chinese legal system is not the exception. Although the downfall of the late Qing Dynasty Regime led to the disintegration of the Chinese legal system as a formal institution, the legal culture that constitutes the basis of the Chinese legal system still exists. Some factors have disappeared due to profound historical changes, such as the end of monarchism and of feudalism, but many unique aspects that embody the democratic nature of the Chinese nation still exist. Inheritance of these excellent factors of legal culture provides a foundation for building the Chinese legal system in the new era. Just like a seed that sprouts with the spring breeze, the new era's system must regenerate and grow under suitable conditions.

On December 31, 1999, when all were welcoming the arrival of the new millennium, the CPC Central Committee called for the great rejuvenation of the Chinese nation in the new century, based on the completion of the reunification of the motherland and the building of China

74 钦定大清会典 (Imperial Code of the Great Qing Dynasty), during the Emperor Guangxu reign, Preface section, Revised edition in the 25th year of Guangxu, at 1b.

into a strong, prosperous, democratic, and culturally advanced socialist modern country. Immediately afterwards, the great rejuvenation of the Chinese nation became the foremost issue of our times. It is first and foremost a cultural rejuvenation, which also includes the revival of Chinese legal culture. Cultural rejuvenation is the most urgent task in the great cause of national rejuvenation and the longest-lasting task. Despite this, the great rejuvenation of the Chinese nation has provided the most promising historical conditions for the promotion of the Chinese legal culture and system.

In addition, through 70 years' development, a socialist legal system has been formed in China, and various systems such as legislation, law enforcement and judicature have matured rapidly. A series of speeches by President XI about promoting Chinese legal culture have provided favorable support for building the Chinese legal system in the new era. President XI also specifically mentioned in his speech: "Long ago, our ancestors began to think about the question of how the excesses of human behavior could best be reined in. China's first systematically compiled code of written laws appeared as early as the Spring and Autumn and Warring States periods (770–221 BC). In the years from the Han Dynasty (206 BC–AD 220) to the Tang Dynasty (AD 618–907), China succeeded in establishing what was essentially a fully developed set of written laws. The legal system of ancient China embodied a huge wealth of knowledge and wisdom, allowing it to occupy a unique place among the major legal systems of the world. We need to take note of the successes and failures of China's ancient legal traditions; to identify, extract, and promote the very finest elements of China's traditional legal culture; and to selectively integrate these elements into our present initiatives."[75] In this speech, President XI affirmed the historical position and value of Chinese legal culture, indicating that to refresh the contemporary Chinese legal system, we need to make the best of the abundant legal culture of China. He pointed out: "History is the best teacher. In the long historical process, the Chinese nation has created a unique and splendid culture and accumulated rich experience in governing the country. This includes both successful experiences in social development during peaceful times and profound lessons from social turmoil during times of decline. The ancient Chinese approach advocated that the people are the foundation of the country, governance should be based on the will of the people, and that law and rite should be applied to govern the country while virtue should be the guiding principle and punishment the subsidiary means. The key to governance is to first understand the people, and governance should be based on morality, self-cultivation, and adaptation to changing circumstances. We must remain alert to dangers in times of peace and be prepared for conflict. There are important insights related to those points. To govern the country and society, many of the issues we face today can be found in history, and many events from the past

75 On October 23, 2014, XI Jinping delivered an important speech at the second plenary session of the Fourth Plenary Session of the 18th CPC Central Committee.

can serve as examples for us today. Today's China has developed from the China of yesterday and the day before. To govern today's China well, we need to have a deep understanding of our country's history and traditional culture, and actively summarize the exploration and wisdom of ancient Chinese governance."[76]

Chinese legal culture holds high the people-oriented principle, the combination of rite and law, and the complementary relationship between virtue and law in governance. Furthermore, it respects the principle of "affection being considered along with the law" in the judiciary, the concept of harmony between heaven and humanity, and the policy of strict governance and benevolent rule. In addition, it values the legal supervision of explicit duty and responsibility, and the pursuit of good governance through the rule of law. All these priorities can serve as important cultural resources for building a new era of evolution of the Chinese legal system.

However, the Chinese legal system of the new era is a unique socialist legal system and must have its own distinctive characteristics. It also needs to win the respect of the world with its advanced nature. Therefore, it cannot be constructed overnight.

To achieve this goal, firstly, we need to improve the socialist legal system with Chinese characteristics, to continuously diversify the socialist rule of law system with Chinese characteristics and to innovate the theoretical system of socialist rule of law with Chinese characteristics. We also need to provide solid legal protection for upholding and improving the socialist system with Chinese characteristics, and to promote the modernization of national governance system and capacity, so that all systems reach stability and maturity. Secondly, we need to make great efforts to explore excellent legal and cultural resources, to rationally summarize ancient China's governance experience, and to harmoniously integrate the ancient and the modern. Moreover, we need to learn the best from legal and cultural achievements of others and make the best use of them. Furthermore, we need to strengthen legal education, improve citizens' legal awareness and rule of law literacy, so that everyone understands the importance of law.

Therefore, constructing the Chinese legal system in the new era is by no means a simple task that can be done overnight. Instead, it is a grand project that involves many aspects and a goal of keeping to the path of independent construction of rule of law. We are confident because the objective conditions of reality have been established and continue to be enriched. We must continue to conduct rigorous theoretical research, closely connect with the practice of national rule of law construction, and bring together the wisdom and strength of the entire nation, to work hard for building the Chinese legal system in the new era.

76 On October 13, 2014, XI Jinping gave a speech at the 18th collective study on state governance in China's history in the Political Bureau of the CPC Central Committee.