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Updated Interpretation of the Chinese Legal System*

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Abstract As an important accomplishment of self-governance exploration for the Chinese nation, the Chinese legal system has contributed significantly to human rule-of-law civilization, and should be re-interpreted from three dimensions: historical tradition, prevailing practice, and future development. Following the constant logic of rule-of-law development in China, Chinese rule-of-law modernization marks a new era of the Chinese legal system and is a specific embodiment of Chinese modernization in the domain of rule of law. The Communist Party of China (CPC) has explored the China's socialist rule-of-law practice with Chinese characteristics, carried forward the essence of fine Chinese rule-of-law culture, and learned from others' important rule-of-law achievements, modernizing the rule of law for the needs of China. Furthermore, XI Jinping Thought on the Rule of Law, adapting to the times to promote the great rejuvenation of the Chinese nation, understands and grasps the basic laws of national governance, the laws of socialist rule-of-law building and the principles of law-based humane civilization development. The Chinese legal system has thereby been revised and expanded through linking history with reality, the international scene with the domestic one, and theory with practice. Surely, the updated Chinese legal system with China characteristics and with world significance will return to global centre-stage in rule-of-law development. Also, the updated Chinese legal system in the new era will embrace the revival of Chinese rule-of-law civilization, while the Chinese rule-of-law modernization will advance the great rejuvenation of the Chinese nation.

Keywords Chinese legal system, Chinese rule-of-law civilization, XI Jinping Thought on the Rule of Law, Chinese law-based modernization, great rejuvenation of the Chinese nation

The concept of the "Chinese legal system" and the theories related to "legal system" are expressions introduced from Western learning to China in modern times.[1] However, the ancient Chinese laws and regulations, legal theory, rule-

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1 "The language of ancient Chinese does not have the modern-sensed term of 'legal system,' which undoubtedly results from the introduction of Western learning in modern Chinese history. More precisely, this term comes from Japan after the Meiji Restoration, and is probably first created in Japanese characters, and then is adopted by Chinese scholars and introduced into modern China. Meanwhile, a complete set of theories related to the 'legal system' is translated into Chinese and introduced into China." LAI Junnan, 建构中华法系——学说、民族主义与话语实践 (1900–1949) (Building Chinese Legal System—Theory, Nationalism and Discourse Practice [1900–1949]), 9 (2) 北大法律评论 (*Peking University Law Review*), Peking University Press, at 418 (2008). In modern times, Japanese scholar Hozumi Nobushige, American scholar John H. Wigmore and Chinese scholars LIANG Qichao, YANG Honglie, LI Cishan, DING Yuanpu, CHEN Guyuan, RUAN Yicheng and JU Zheng have directly promoted the creation and evolution of the concept of "Chinese legal system."

of-law tradition and legal culture that the "Chinese legal system" represent are unique to the Chinese nation, and they are extremely advanced and profound. Our understanding of the Chinese legal system should not stop at the introduced concept expression, but should study its rich significance, creation and evolutionary process and direction. Since the foreign concept of the "Chinese legal system" was introduced into modern China, it has experienced long-term building and re-building during rule-of-law development in China. Its definition has been expanded and iterated from a single dimension to multiple dimensions, from looking backwards to practicing, from describing to directing, having taken on a new outlook. Since the 18th National Congress of the Communist Party of China (CPC) in 2012, XI Jinping, General Secretary of the CPC Central Committee, has summarized the rule-of-law tradition of ancient China, inclusive of its success and failure, identified and inherited the essence of fine traditional Chinese legal culture, endowed Chinese rule-of-law civilization with new meaning of the times. The result is that Chinese rule-of-law civilization grows with new vitality. XI Jinping Thought on the Rule of Law conforms to the requirements of the times to realize the great rejuvenation of the Chinese nation. Based on the socialist rule-of-law practice with Chinese features, XI Jinping Thought on the Rule of Law has well understood and steered the basic laws of national governance, the building of socialist rule-of-law and the development of law-based humane civilization. It has positioned the Chinese legal system in terms of linking history with reality, linking the international and domestic dimensions, and combining theory with practice. In addition, it has endowed the Chinese legal system with new meanings, which always embody the logic of Marxist rule-of-law theory. The so-called Chinese legal system today follows the internal logic of China's rule-of-law development and shows the subjectivity of the Chinese nation. Nowadays, the Chinese legal system has entered a new phase, in which the CPC is leading the Chinese people to pursue the overall strategy of realizing the great rejuvenation of the Chinese nation, to face the world's changes that have been unseen in a century, and to advance the rule of law in all respects. The fine traditional Chinese legal culture is the historical resource for building the socialist rule of law with Chinese characteristics, and represents the identity of the new stage of the Chinese legal system. Modernizing Chinese rule of law is the only path by which to revive Chinese rule-of-law civilization. Reaffirming the Party's leadership, upholding socialism with Chinese characteristics and implementing socialist rule-of-law theory with Chinese characteristics, will eventually promote the new development of Chinese rule-of-law civilization, realize the great rejuvenation of the Chinese nation and create a new form of humane law-based civilization.

If we do not base ourselves on the China's socialist rule-of-law practice with Chinese characteristics, we will not then understand the profound heritage and rich connotation of the Chinese legal system. The Chinese legal system is not

just a historical tradition, and the deeper exploration of it is not for the restoration of traditions. To better understand the Chinese legal system in the new era, we should explore the convergence point between rule-of-law tradition and practice, and identify the direction of future rule of law development.

I The Chinese Legal System Is a Major Achievement of the Chinese Nation's Exploration of Self-Governance

Achievement of law-based good self-governance is a common theme of human civilization. "The course of human progress shows that law-based governance is the most reliable and stable means of governance."[2] Different civilizations generate different answers to self-governance, build different legal systems, formulate different genealogies of law, and shape different rule-of-law traditions. We should identify the profound foundation and rich meaning of the Chinese legal system based on the close relationship between rule of law and genealogy of law, and between the legal system and genealogy of law.

A | The Rule of Law and the Genealogy of Law

"The rule of law is one of the most important accomplishments of human civilization. Its quintessence and gist have universal significance for the national and social governance of all countries."[3] How to achieve good self-governance is a common concern and consensus of all humanity. "At no moment can the governance of a country be separated from the rule of law."[4] "The rule of law is not something to be claimed by any country or nation, but is an achievement of all human civilizations and provides important principles by which humans can rein in the excesses of their behavior."[5] Furthermore, different nationalities, cultures and regions still have their own distinct characteristics in the process and methods of law-based self-governance. "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 (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

2 XI Jinping, 推进澳门"一国两制"成功实践走稳走实走远 (Progress in Practicing "One Country, Two Systems" in Macao), Dec. 20, 2014, in 习近平谈治国理政 (*Xi Jinping: The Governance of China*), Vol. 2, Foreign Languages Press, at 424 (2017).

3 XI Jinping, 加快建设社会主义法治国家 (Accelerating the Building of a Socialist Country Based on the Rule of Law), Oct. 23, 2014, in 论坚持全面依法治国 (*Exercising Law-Based Governance on All Fronts*), Central Party Literature Press, at 111 (2020).

4 XI Jinping, 在中央全面依法治国委员会第一次会议上的讲话 (The Speech at the First Meeting of the Commission for Law-Based Governance under the CPC Central Committee), Aug. 24, 2018, in 论坚持全面依法治国 (*Exercising Law-Based Governance on All Fronts*), Central Party Literature Press, at 227 (2020).

5 ZHANG Wenxian, 习近平法治思想的政理、法理和哲理 (Politics, Jurisprudence and Philosophy of XI Jinping Thought of the Rule of Law), 3 政法论坛 (*Tribune of Political Science and Law*), 24 (2022).

world."[6] The Chinese nation's exploration of how to rein in the excesses of human behavior has both the commonality of all humanity and distinctive characteristics of China. "Using explicit legal norms to regulate social life and maintain social order is a universal practice across the whole world throughout history. From the perspective of China's history, although the tradition of human governance has been deep-rooted for thousands of years, a systematically compiled code of written laws was put together in the Spring and Autumn and the Warring States periods, and a relatively complete code was formed during the Han and Tang dynasties.[7] In the process of legally regulating social life and maintaining social order, we have not only acquired a vital understanding of laws, codes and their external technical dimensions, but have also gained a profound understanding of their internal political essence. XI Jinping has repeatedly quoted China's classical exposition on "law" and pointed out: "The legal thought of ancient China is very rich. For example, the ancients said: 'A country may experience law and order or chaos. When law can be properly enforced, a country enjoys the law and order, otherwise it descends into chaos.' The law is the state weighing-scale and a set of rules, so that the weighing-scale can determine the weight, and the rules can serve as criterion.' Countries with explicitly-conceived legal system are strong, and those with inexplicitly-conceived legal system are weak."[8] The concept of rule of law and the concept of genealogy of law complement each other. The former focuses on the political dimension of law-based self-governance, while the latter cares about the technical dimension of law-based self-governance; the former is the internal political essence of the genealogy of law, while the latter is the external technical display of the rule of law.

B | The Legal System and the Genealogy of Law

A legal system is the most direct manifestation of the genealogy of law, but the legal system only presents static aspects of the genealogy of law. After all, there is a qualitative difference between the legal system and the genealogy of law. The legal system and the genealogy of law complement each other externally and internally. The genealogy of law is a comprehensive and pluralistic concept, while the legal system expresses its meaning through norms, codes and other applicable forms. Since the 1980s, Chinese scholars have gone through different stages in their understanding of the "Chinese legal system." Initially, they believed that the "Chinese legal system" was made up of "China's feudal laws developed for over 2,000 years from the Warring States period to the Qing Dynasty. Such a legal system, regarded as one of the five legal systems in the world, had clear evolution and distinctive features."[9] With deepening research,

6 See XI, fn. 3 at 110–111.

7 XI Jinping, 全面推进科学立法、严格执法、公正司法、全民守法 (Develop a Law-Based Country, Government and Society), Feb. 23, 2013, in 论坚持全面依法治国 (*Exercising Law-Based Governance on All Fronts*), Central Party Literature Press, at 19 (2020).

8 Id.

9 Editorial Board of Encyclopedia of China Publishing House and Law Editorial Sub-Committee of Encyclopedia of China Editor-in-Chief Committee, 中国大百科全书・法学 (*Encyclopedia of China · Law*), Encyclopedia of China Publishing House, at 764 (1984).

scholars identified the deeper meaning of the "Chinese legal system," and gradually expanded their understanding of its origin, evolution, manifestations, representations and influence. The typical view is as follows: "The so-called Chinese legal system refers to the legal system of Chinese feudal society with the combination of ancient Chinese etiquette and law as its basic features, and with the influence of feudal laws of Japan, Democratic People's Republic of Korea (DPRK), Viet Nam and other countries. It basically evolved with Chinese feudalism."[10] "The so-called Chinese legal system refers to the feudal-period legal system of China and the legal systems of East Asian countries. The Chinese legal system during the feudal period was created and evolved under the particular social and historical conditions in ancient China, with the combination of etiquette and law as the fundamental feature, the written criminal law as the core content, and Tang Code with Commentaries as the typical representation. The legal systems of East Asian countries are modelled on Tang Code with Commentaries."[11] Thus, the Chinese genealogy of law has been constantly extended and enriched, and Chinese scholars tend to look at the static Chinese legal system based on the terminologies themselves. In other words, Chinese genealogy of law is matched to the legal system of ancient China. Thus, the accompanying proposition hereby is: The modernization of rule of law in China is entirely driven by the outside world, while the origin of the modernization of rule of law in China is accompanied by the "termination" and "disintegration" of the Chinese legal system. This is a major issue that needs our close attention. "Many Westerners are used to observing China as a modern nation-state from the perspective of Western modernization theory, and they have not seen China from the perspective of more than 5,000 years of civilization history, so they have difficulty in truly understanding China's past, present and future."[12] Modernizing China's rule of law is not an "sudden change" in the historical process, because the introduction of Western learning requires a benign environment and soil, all of which are manifested in the internal mechanism of structural changes in the Chinese legal system. External factors directly promote the modernization of rule of law in China, but the constant factors in this development and the internal logic of China's historical development require a very clear understanding. Certainly, the Chinese legal system has been critical for the Chinese nation, and has generated important and far-reaching influences on East Asia and the rest of the world. More importantly, it is imperative to look at the creation, evolutionary development, and direction of the Chinese legal system itself and see its constant factors from the perspective of linking ancient and modern times.

10 ZHANG Yaoming, 略论中华法系的解体 (On the Disintegration of Chinese Legal System), 3 中南政法学院学报 (*Journal of Central South University of Political Science and Law*), 130 (1991).

11 HE Qinhua & KONG Jing, 新中华法系的诞生? —— 从三大法系到东亚共同体法 (The Birth of the New Chinese Legal System?—From Three Legal Systems to East Asian Community Law), 4 法学论坛 (*Legal Forum*), 44 (2005).

12 XI Jinping, 把中国文明历史研究引向深入, 增强历史自觉坚定文化自信 (Advancing Study of Chinese Civilization), 14 求是 (*Qiushi*), 6–7 (2022).

XI Jinping notes that "We should deepen the study of the features and forms of Chinese civilization so as to provide strong theoretical support for new forms of humane civilization practice. Over the past more than 5,000 years, the Chinese people have created a splendid civilization and made significant contributions to the progress of human civilization."[13] "We need to explain clearly the historical origin, evolution and basic tendency of the fine traditional Chinese culture and its uniqueness, perceptions and distinctive features, so as to enhance confidence in Chinese culture and values."[14] The profound foundation and rich meaning of the Chinese legal system should be explored from three dimensions: the historical tradition, the current rule-of-law practice and the future development direction. As stated above, the Chinese legal system is a major achievement of Chinese self-governance, a significant highlight of law-based Chinese civilization and an important part of fine Chinese traditional culture. Furthermore, it is necessary to clarify the historical origin, evolution and basic tendency of fine traditional Chinese culture, and to clarify its uniqueness, perceptions and the distinctive features of the Chinese nation in the practice of the rule of law.

II Chinese Genealogy of Law Is Unique in the History of World Legal Systems

As the world's oldest and longest-lasting civilization, Chinese civilization has long dominated the development history of human civilization. XI Jinping stresses that "Chinese civilization is extensive and profound, and has a long history stretching back to antiquity. It is the cultural identity of the Chinese nation, the foundation of contemporary Chinese culture, the cultural bond holding all Chinese around the globe together, and it is a treasure trove inspiring cultural innovation."[15] We should not only study the long history of Chinese civilization, but also look at its far-reaching influence and great significance on the Chinese nation at present and even in the future. "We should link study of the origins of Chinese civilization with that of other major issues including the features and forms of Chinese civilization. Through the interpretation of the origins of Chinese civilization, we will explore and explain how a sense of community among the Chinese people has been developed and how Chinese people of all ethnic groups are united in diversity. We should carry out research on the essential characteristics and the development pattern of Chinese civilization, which features benevolence, emphasis on people's lives, respect for justice and integrity, righteousness, and universal harmony, and elaborate on the profound cultural resources on which the Chinese path is based."[16] Epitomized by Chinese

13 Id. at 6.
14 XI Jinping, 培育和弘扬社会主义核心价值观 (Cultivate and Disseminate the Core Socialist Values), Feb. 24, 2014, in 习近平谈治国理政 (*Xi Jinping: The Governance of China*), Vol. 1, Foreign Languages House, at 164 (2018).
15 See XI, fn. 12 at 4.
16 See XI, fn. 12 at 7.

genealogy of law, Chinese rule of law is an important part of Chinese civilization. Since the Chinese legal system is an important achievement of the Chinese nation's self-governance, we should not only understand its uniqueness and its remarkable achievements, but also extend our understanding to the historical traditions, to current rule-of-law practice, to the future development direction and their inter-relations, and to the internal relations between the Chinese legal system and the governance system of ancient China.[17] These ideas clearly show that Chinese genealogy of law not only focuses on the legal and technical operations such as legislation and trial, but also focuses on the building of the whole civilized order, so it has profound historical background and strong vitality. Chinese genealogy of law takes the rule-of-law tradition, practice and development into consideration, paying attention to both the technical dimension and the political dimension of self-governance.[18] On this basis, we can summarize the uniqueness of Chinese genealogy of law in its formation and development.

A | Originality of Generation

XI Jinping notes that "Since ancient times, China has formed a legal system that occupies a unique place in the history of world legal systems and has fostered a profound legal culture. Traditional Chinese law took shape in the Qin Dynasty (221 BC–206 BC) and gradually matured in the Sui (581–618) and Tang (618–907) dynasties, best represented by the Tang Code with Commentaries compiled in the seventeenth century."[19] Both Chinese and foreign scholars recognize that the Chinese legal system has clearly inherited and evolved. Traces of the Chinese legal system may be found in the three ancient dynasties of Xia (ca. 2070 BC–1600 BC), Shang (1600 BC–1046 BC) and Zhou (1046 BC–256 BC). However, based on the tradition of Chinese system of ancient statutory law, observing the Chinese legal system from the standpoint of national law, one can see that the Chinese legal system, which is based on legal codes and decrees, was actually initially formed and further developed during and since the Qin and Han dynasties. Therefore, the origin of

17 XI Jinping, 坚持和完善中国特色社会主义制度、推进国家治理体系和治理能力现代化 (Uphold and Improve the Chinese Socialist System and Modernize State Governance), Oct. 31, 2019, in 习近平谈治国理政 (*Xi Jinping: The Governance of China*), Vol. 3, Foreign Languages House, at 119–120 (2020).

18 Since modern times, Chinese scholars have elaborated the features of Chinese legal system, such as the eight features summarized by CHEN Guyuan, and the six features presented by ZHANG Jinfan. For details, see CHEN Guyuan, 中国法制史概要 (*Summary of Chinese Legal History*), San Min Book Co., Ltd., at 53–59 (1977); ZHANG Jinfan, 中华法系特点探源 (A Probe into the Features of Chinese Legal System), 4 法学研究 (*Chinese Journal of Law*), 48–51 (1980). These summaries are mostly descriptions of specific legal systems, and do not highlight the dynamic and pluralistic nature of Chinese legal system. What is instructive is ZHANG Wenxian's summary of the reasons why the Chinese legal system is unique. He specifies that this is because that the Chinese legal system has a long history, which shows the Chinese rule of law civilization, focuses on the building of the whole civilized order, and has an extensive influence. See ZHANG, fn. 5 at 24.

19 XI Jinping, 以科学理论为指导, 为全面建设社会主义现代化国家提供有力法治保障 (Provide Sound Legal Guarantee for Socialist Modernization), Nov. 16, 2020, in 习近平谈治国理政 (*Xi Jinping: The Governance of China*), Vol. 4, Foreign Languages House, at 289 (2022).

the Chinese legal system is in the Qin Dynasty.[20] Nearly three thousand years ago, China formed a fixed legal form and a rich legal system, and its legal content embodies a distinctive creative mentality and superb legislative technique. China's ancient legal system was never influenced by foreign legal culture at all stages of its emergence, evolution and maturity, showing its distinctive originality, spontaneity and regionality. "Han inherited the Qin Legal System," but also innovated and developed on the basis of following the Qin law. In the system of laws and regulations of the Tang Dynasty, the traces of the inheritance of laws and regulations from the Qin and Han dynasties are clearly discernible. From Qin and Han dynasties to the Tang Dynasty, the legal system based on laws and decrees developed from the initial stage to the highly complete stage, reaching its most refined form in the Tang dynasty.[21] The most mature and complete form of Chinese legal system is the ancient code and statute system represented by the Tang Code with Commentaries, and a set of legal operation techniques and legal theory systems formed around the statute system; more importantly, the rule of law tradition, legal culture and civilized order are based on the Tang Code with Commentaries. The Chinese legal system has contributed various thoughts and concepts to human law-based civilization. "Unlike legal systems such as Continental law, Anglo-American law and Islamic law, traditional Chinese law was formed against a historical background unique to China. It testifies to the great creativity of the Chinese nation and the cultural profundity of China's legal tradition. It epitomizes the ethos and wisdom of the Chinese nation and contains many excellent ideas and concepts worth passing on. These include the governance strategy of enforcing public discipline through the application of both morality and law, the people-centered concept that the people are the foundation of a state and only when the foundation is solid will the state be stable, the wish for social harmony without lawsuits, and the idea of prudence that prioritizes moral enlightenment over legal punishment. The strategy incorporates the thought that morality is the mainstay of punishment, possesses the concept of equality that advocates passing judgments in accordance with the law and ensuring that the punishment fits the crime, and includes the principle of leniency towards widowers, widows, orphans, childless couples, children, women, and people with disabilities. All of these features shed light on the wisdom of China's traditional legal culture."[22] Thus, one can see the originality of the Chinese legal system, its profound

20 YAN Xiaojun said: "In terms of time sequence, the system of rules of conduct of Qin Dynasty is the earliest such a system, which is rooted in the early habits and customs of Qin Dynasty people; on this basis, Qin changed the system into law and pioneered the written legal form of law." "Embodying a great creative spirit, the law of Qin Dynasty is unprecedented in history and has influenced the traditional laws of China for more than 2,000 years, showing the historical achievements of those subsequent arrivals." YAN Xiaojun, 秦律：中国"第一"律 (The System of Rules of Conduct of Qin Dynasty: The First Law of China), 11 法学 (*Law Science*), 151 (2020).

21 See ZHANG Jianguo, 中国律令法体系概论 (An Introduction to the Chinese Legal System), 5 北京大学学报（哲学社会科学版）(*Journal of Peking University* [*Philosophy and Social Sciences*]), 93–99 (1998).

22 See XI, fn. 19 at 290.

historical background and its strong vitality.

B | Evolutionary Continuity

The Chinese legal system and Chinese rule-of-law civilization are important parts of Chinese original civilization. "In the over-5000-year uninterrupted legal history of China, a track of legal culture development has been formed, which is vertically inherited and promoted from generation to generation. This process not only has inherent connection and relevance, but also highlights the times, particularity and innovation of different periods."[23] Before the Spring and Autumn period, the legal system of ancient China had laws but no codes. After the Spring and Autumn period, there were laws and codes.[24] The evolutionary development of the Chinese legal system of the following dynasties all inherit and benefit from the previous ones, and the inheritance track is very clear. From the Chronicles of Criminal Law of all the dynasties, we can see a similar development track of the ancient Chinese legal system. For example, Records of Criminal Law in the History of the *Ming Dynasty* states: "Since the Han Dynasty, the evolution of criminal law has been different. The Sui Dynasty changed the article of five punishments and set the order of requiring three trials. Punishments for violations of the rites were introduced in the Tang Dynasty legal system. Following the Tang, Song Dynasty emperors even stressed the punishment for violations of the rites. When laws and regulations were not available for making a ruling, then the emperor's order were to be followed. Therefore, the punishments for violations of the rites could be light or heavy, and be inconsistent. Yuan Dynasty laws and regulations were made based on cases of the time. Initially in the Ming Dynasty, Prime Minister LI Shanchang said, 'All the laws and regulations of the past dynasties are based on the Nine-Chapter Law of the Han Dynasty, and they were well developed in the Tang Dynasty. The Ming Dynasty's legal system should follow that of the Tang Dynasty.' Emperor Taizu of the Ming Dynasty at that time, followed his words."[25] Due to limited historical materials, Chinese scholars in the Ming and Qing dynasties, and in modern times, do not have many Qin Dynasty legal documents to study, so they only managed to trace the laws and regulations back to the Han Dynasty. With a large number of Qin and Han bamboo slips and wood chips unearthed in the middle and late 20th century, we can see the general appearance of Qin and Han laws, and clearly see the inheritance relationship between Qin and Han laws and Tang laws in legislative language, text structure, basic principles and

23 ZHANG Jinfan, 弘扬中华法文化, 构建新时代的中华法系 (Promoting Chinese Legal Culture and Building Chinese legal System in the New Era), 3 当代法学 (*Contemporary Law Review*), 151 (2020).

24 See CHEN Guyuan, 中国法制史概要 (*Summary of Chinese Legal History*), The Commercial Press, at 61–62 (2011).

25 ZHANG Tingyu et al.,《明史》卷九十三 (*History of the Ming Dynasty*), Vol. 93, 志第六十九《刑法一》 (*Chronicle Vol. 69—Criminal Law Vol. 1*), Zhonghua Book Company, at 2279 (1974).

legislative philosophies." The splendid legal culture of the Tang Dynasty is not just the product of the Tang Dynasty, but the result of the superposition of legal knowledge and legal wisdom of various dynasties in various times in the land of China since the Xia, Shang and Zhou dynasties.[26] After the Tang Dynasty, the Tang legal system, being the backbone of the legal system, was influential until the late Qing Dynasty. SHEN Jiaben, a great jurist in the late Qing Dynasty, says that "Law-makers learn from the Tang Dynasty legal system, which is followed by the Song Dynasty. Although the post-Tang legal systems learn more or less from that of the Tang Dynasty, most of them are rooted in that of the Tang Dynasty."[27] The Chinese legal system and legal civilization have never discontinued their development and have been constantly enriched, eventually fostering a treasure of global rule-of-law culture.[28]

C | Extensive Impact

The Chinese legal system is profound in heritage, rich in meaning, self-contained in system and clear in context. It is a treasure of the Chinese nation and represents the high point of the development of rule of law in the Middle Ages. The Tang Code with Commentaries is regarded as the pinnacle of the Chinese legal system. Just as Roman law represents the civilization of ancient slavery, Napoleonic Code marks modern capitalist civilization,[29] while Tang Code with Commentaries is a milestone in the history of development of human rule-of-law civilization, representing ancient feudal civilization. Tang Code with Commentaries is not only the highest achievement of Chinese ancient legislation in terms of concept, principle, thought and mentality, but also is extremely advanced based on the modern legal concepts. CAI Dunming, a criminal jurist of Taiwan University, said when talking about the position of the Tang Dynasty laws and regulations in the legal system of China: "... this old law has various much advanced concepts of criminal law in terms of its merits. Even from the perspective of modern criminal law, it is not inferior, and it is not difficult for people studying this old law to be aware and proud of its merits. Among the old laws, the Tang legal system

26 HE Qinhua & ZHANG Shun, 民族智慧的叠加：唐代中华法律文化的辉煌 (Superposition of National Wisdom: Brilliance of Chinese Legal Culture in the Tang Dynasty), 1 法学论坛 (*Legal Forum*), 5 (2022).

27 SHEN Jiaben, 历代刑法考 (*Examination of Criminal Law in Past Dynasties*), Vol. 1, The Commercial Press, at 43 (2011).

28 John H. Wigmore, a well-known comparative law scholar, said: "What is unique is that it is the only ancient legal system that has survived to this day-for more than 4,000 years; In contrast, other legal systems in force today are just children." "However, China's system has survived in a powerful nation with a population of 400 million, no matter how turbulent and changeable the dynasties were." John H. Wigmore, 世界法系概览 (*An Overview of the World Legal Systems*), Part 1, translated by HE Qinhua, Shanghai People's Publishing House, at 110–112, 158 (2004).

29 When LI Guangcan made a preface to 唐律疏议译注 (*Notes and Translations of Tang Code with Commentaries*), he said: "The three legal systems in human society and history represent three times of private ownership's 'civilization'—Roman Law represents ancient slavery civilization, Tang Law represents ancient feudal civilization, and Napoleonic Code represents modern capitalist civilization. This is an overview of the development and evolution of three legal systems from slavery to feudal private ownership and from feudal private ownership to capitalist private ownership in the historical stage of human legal system with the principle of historical materialism." CAO Manzhi et al., 唐律疏议译注 (*Notes and Translations of Tang Code with Commentaries*), Jilin People's Publishing House, at 7 (1989).

is the most valuable and occupies the most important position."[30] The achievements of the Tang Code with Commentaries in legislative technique and legal principles far exceed those of contemporary Western countries. Hitoshi Hitomi, a well-known Japanese sinologist, indicates that "At that time, no code in the world can match the Tang Dynasty's laws and regulations. Even the Constitutio Criminalis Carolina, known as the epoch-making code of Western Europe in the Middle Ages, was 900 years behind the Tang Dynasty legal system and much less developed. Even the Criminal Code of Western Europe in the 19th century was no more developed than the Tang Dynasty legal system.[31] "The Tang Dynasty legal system, based on the Tang Code with Commentaries, is supported by the unique laws and regulations. Together with the strong position of the Tang Dynasty itself, the Tang Dynasty legal system "influences the historical process of subsequent dynasties and the neighboring countries."[32] The direct demonstration and influence of the Tang Dynasty legal system on the development of legislation and rule of law in East Asian countries such as North Korea, Japan, Ryukyu and Annan, last over a thousand years. On this basis, the "Chinese legal system" has spread.[33] Thus, the Tang Dynasty legal system, and the Tang Code with Commentaries in particular, having long influenced the East Asian countries, is known as "the pivot of Japanese legal history" and "the pivot of oriental legal history."[34] The Chinese legal system is not only the crystallization of the wisdom and rationality of the Chinese nation, but also the mother law of East Asian countries and an important member of world legal systems. It has a distinct national feature but also has a wide range of global features.

D | Regularity of Development

The Chinese legal system has never discontinued for thousands of years, showing a clear evolutionary track and a regular evolutionary process. It is an important achievement of the Chinese nation's exploration of self-governance;

30 CAI Dunming also compared the Tang Dynasty Law with Roman Law to highlight its advantages, "However, the essence of Roman Law is not in the criminal law, but in its civil law. If the criminal law is well prepared, the old law of our country is actually above the Roman Law, so our country can be called the country with the earliest developed criminal law. ..... In addition to criminal law, the laws of the Tang Dynasty are classified according to modern laws. Although they still include administrative law, disciplinary law, civil law, commercial law, procedural law and local autonomy regulations, criminal law is the most important one, so those who want to study ancient criminal law today must not ignore the existence of the laws of the Tang Dynasty." CAI Dunming, 唐律与近世刑事立法之比较研究 (*A Comparative Study of Tang Dynasty Law and Modern Criminal Legislation*), Hanyuan Press, at 2–3 (1976).

31 Nakata Kaoru, 补订中国法制史研究·刑法 (*Supplement to the Study of Chinese Legal History—Criminal Law*), University of Tokyo Press, at 172 (1981).

32 LOU Jin, 魏晋南北朝隋唐立法与法律体系 (*Legislation and Legal System in the Dynasties of Wei, Jin, South and North, Sui and Tang*), Vol. 1, China Social Sciences Press, at 1 (2014).

33 See YANG Honglie, 中国法律对东亚诸国之影响 (*The Influence of China's Laws on East Asian Countries*), China University of Political Science and Law Press, at 17 (1999).

34 In 1933, when Nakata Kaoru made a preface to Hitoshi's masterpiece 唐令拾遗 (*The Addendum of Tang Dynasty Law*), he said: "It should be said that Tang Dynasty Law is not only a masterpiece in the legislative history of China, but in fact it is a big code that constitutes the pivot of the legal history of East Asia." In 1982, Ikeda On wrote a postscript to *The Addendum of Tang Dynasty Law*, saying: "*The Addendum of Tang Dynasty Law*, known as the pivot of the history of the oriental legal system, has its laws and rules passed on in the Song Dynasty Criminal Code and the Tang Code with Commentaries." Nakata Kaoru, 唐令拾遗 (*The Addendum of Tang Dynasty Law*), compiled by LI Jin, Changchun Publishing House, at 887, 893 (1989).

the rule of law directly impacts the destiny of a country. XI Jinping indicates that "History is the best teacher. Experiences and lessons have made it clear to our Party that the rule of law is an indispensable and important means in the governance of the country. When the rule of law prevails, the country prospers, but should it weaken, the country descends into chaos. When the rule of law is valued and exercised, the country is peaceful and the people enjoy a safe life. When the rule of law is neglected and relaxed, the country is chaotic and people are dissatisfied."[35] Ancient Chinese paid particular attention to the compilations of laws and codes. One can say that the history of the development of the Chinese legal system and the evolution of the Chinese rule-of-law civilization correlate with the compilation of Chinese laws and codes.[36] The regularity of the formation and development of the Chinese legal system is also directly demonstrated by the compilation and revision of the ancient Chinese codes. XI Jinping repeatedly quotes this kind of classic exposition of HAN Feizi, a representative of Legalism ("A country does not always prosper or fail. When the country respects and follows the law, it prospers, otherwise it weakens"[37]), to illustrate the law-making significance. The process of code preparation in ancient China is dominated by legislators and politicians, such as Emperor Gaozu of the Han Dynasty, XIAO He and Nine-Chapter Law, Emperor Wudi of the Western Jin Dynasty, JIA Chong, DU Yu and the Code of the Taishi Reign, Emperor Taizong of the Tang Dynasty, CHANGSUN Wuji, WEI Zheng and the Code of Zhenguan. Outstanding codes of all dynasties are the products of summarizing and incorporating the proceeding-dynasty's legislative achievements and judicial experiences. Based on the basic pattern and operation mode of China's ancient politics, one can see that an emperor and his surrounding politicians more than often are direct law-makers, and their outstanding code often creates a prosperous era. For example, in the early Han Dynasty, Emperor Gaozu of the Han Dynasty developed a legal system and subsequently brought about the"Rule of Wen and Jing"; in the Western Jin Dynasty, Emperor Wudi revised the law and subsequently brought the Rule of Taikang; and in the Tang Dynasty, Emperor Taizong

35 XI Jinping, 在中共十八届四中全会第二次全体会议上的讲话 (Speech at the Second Full Assembly of the Fourth Plenary Session of the 18th CPC Central Committee), Oct. 23, 2014, in 习近平关于全面依法治国论述摘编 (*XI Jinping Selected Works on Exercising Law-Based Governance on All Fronts*), compiled by Party Literature Research Center of CPC Central Committee, Central Party Literature Press, at 8 (2015).

36 HAO Tiechuan's "Features of Chinese Legal System" includes "codification of legal system." He also significantly introduced the evolution of legislative practice and guiding ideology after the pre-Qin period. See HAO Tiechuan, 中华法系研究 (*Research on the Chinese Legal System*), Revised Edition, The Commercial Press, at 25–242 (2021).

37 WANG Xianshen, 韩非子集解 (*Collection of HAN Feizi Statements*), punctuated and collated by ZHONG Zhe, Zhonghua Book Company, at 31 (1998). XI quotes Han Feizi in various important speeches and expositions, such as 在庆祝全国人民代表大会成立六十周年大会上的讲话 (Speech at the Celebration of the 60th Anniversary of the Founding of the National People's Congress), Sep. 5, 2014; 密织法律之网，强化法治之力 (Promoting the Rule of Law Network and Law-Based Governance), Oct. 23, 2014; 提高国防和军队建设法治化水平 (Strengthening the Role of Rule of Law in Enhancing National Defense and Military Capabilities), Dec. 26, 2014, and 切实尊崇宪法，严格实施宪法 (Respecting and Implementing the Constitution to the Letter), Jan. 19, 2018, in 论坚持全面依法治国 (*XI Jinping Selected Works on Exercising Law-Based Governance on All Fronts*), Central Party Literature Press, at 73, 104, 130, 200 (2020).

developed the Code of Zhenguang and created the Rule of Zhenguan. XI Jinping notes that "Both history and reality show us that the rule of law can make a country prosperous and strong. Historically, all prosperous times in ancient China are periods when the legal system is relatively sound. During the Spring and Autumn and the Warring States periods, legalists advocated "ruling by law" and practiced it in the State of Qin located in Yongzhou, while SHANG Yang, a high-ranking legalist then, emphasized that "laws must be straightforward while decrees must be enforced," which allowed the State of Qin to quickly rise as a superpower, and his emperor, Qin Shi Huang, eventually integrated six other fellow countries. LIU Bang, Emperor Gaozu of the Han Dynasty, worked out a legal system with his people in Guanzhong, and this legal system played a vital role in unifying the whole of China. Sixty laws were formulated during the reign of Emperor WU of the Han Dynasty and were applied for nearly 400 years during Han Dynasty (202BC–220). Emperor Taizong of the Tang Dynasty prioritized compliance to laws and regulations in state governance. His Code of Zhenguan gave rise to the Rule of Zhenguan; on the basis of Code of Zhenguan, the Tang Code with Commentaries was made, providing a bed-rock for Tang Dynasty prosperity."[38]

III Chinese Legal System and Chinese Rule-of-Law Modernization

The Chinese legal system is an important achievement of the Chinese nation's exploration of self-governance, an important part of the Chinese nation's original civilization, and has distinctive characteristics. The great exploration of the Chinese nation on the path of rule of law has never ceased, nor has the evolution of the Chinese legal system stopped. The evolution of Chinese legal system and the Chinese modernization of the rule of law are not two completely different processes, nor are they simply successive or even substitutive. The process of Chinese modernization of rule of law is a Chinese path to modernization, a new stage of the development of the Chinese legal system and a concrete embodiment of Chinese modernization in the domain of rule of law.

A | Chinese Rule-of-Law Modernazition Marks a New Stage of Chinese Legal System

The Chinese legal system during the Tang Dynasty peaked in the development process and fostered a lasting influence on East Asia. In the late Qing Dynasty, Chinese rule of law experienced a fierce collision between "tradition" and "modernity." Certainly, this kind of collision is only an aspect of "the change from the past to the present" in the historical process of China. It is generally believed that the Chinese legal system "disintegrated" at that time, and embraced an abrupt modernization process due to the external driving force. A critical question hereby is: Given that the sudden kick-off of the rule-of-law modernization process in China was accompanied by the

38 See XI, fn. 4 at 225–226.

disintegration of the Chinese genealogy of law, does it mean that Chinses rule-of-law civilization has a discontinuity and that such a discontinuity is irregular? If so, it should mean that the rule-of-law modernization process in China be driven by external forces. However, evidently it is untrue. "After the end of the Qing Dynasty, the influence of Chinese law system gradually declined."[39] This statement is extremely accurate. It is the influence of traditional Chinese law that declines, while traditional Chinese law itself does not decline. Furthermore, traditional Chinese law itself does not "discontinue" or "cease," but struggles to survive and continues to explore. "After the Opium War in 1840, China was gradually reduced to a semi-colonial and semi-feudal society. At that time, to save the nation from peril and to realize national rejuvenation, the Chinese people and countless people with lofty ideals and insight worked tirelessly to find a political model suitable for the national conditions. Before the Revolution of 1911, the Taiping Heavenly Kingdom Movement, the Westernization Movement, the Reform Movement of 1898, the Boxer Rebellion and the New Deal in the late Qing Dynasty all failed. After the Revolution of 1911, China tried various forms such as constitutional monarchy, restoration of monarchy, parliamentary system, multi-party system, presidential system Various political forces and their representatives stepped up one after another, but all failed to find the right answer. China still saw its homeland torn apart and Chinese people lived in poverty; the big powers were still bullying and grabbing benefits from China. The Chinese people still lived in misery and humiliation."[40] In the world, there is no one-size-fits-all rule of law model or path. The model and path of rule of law suitable for China are not directed by others, nor are they imitated. They can only come from the hard exploration of the Chinese nation through proceeding from its own tradition and reality.

In the process of historical development, "change" is the norm, but the characteristics of change in the process of historical development, such as continuity, consistency and normality, need our attention. "Historical consistency is a feature displayed in the constant relationship structure. Therefore, the consistency of China's history, from the perspective of macro carrier of history, has always been presented through Chinese history. From the perspective of China's historic continuity, why it is always the history of China is because China always maintains its uniqueness, always takes advantage of the situation, always keeps pace with the times, always stands by changes, and always stays resilient and continuous."[41]

"Constant" means "Regular Path," i.e., the thousands of years of cultural accomplishment in the historical process

39 See XI, fn. 19 at 289–290.

40 XI Jinping, 在庆祝全国人民代表大会成立六十周年大会上的讲话 (Speech at the Celebration of the 60th Anniversary of the Founding of the National People's Congress), Sep. 5, 2014, in 论坚持全面依法治国 (*XI Jinping Selected Works on Exercising Law-Based Governance on All Fronts*), Central Party Literature Press, at 68 (2020).

41 REN Jiantao, 常与变：以五大变局重建中国历史宏大叙事 (Constant and Change: Rebuilding the Grand Narrative of China History with Five Major Changes), 54 中国文化 (*China Culture*), 59 (2021).

of China is the rational accomplishment of knowledge and experience in the long process of the formation and development of the Chinese legal system. It is the mental core connecting tradition and future, and contains the development direction and path of the Chinese nation's rule of law. "Change" is "Revision," which is the intergenerational alternation, metabolism and developmental evolution of the law system, concept and culture in the formation and development of the Chinese legal system. "The Yin Dynasty inherited and followed the code of conduct of the Xia Dynasty more or less, so we can know how the Yin Dynasty operated. The Zhou Dynasty inherited and followed the code of conduct of the Yin Dynasty more or less, so we can know how the Zhou Dynasty operated. There may be other dynasties after the Zhou Dynasty, long afterwards, and we can know how that dynasty operated."[42] "Norm" and "Change" are unified in Chinese rule of law, which is a specific aspect of Chinese historical development. In this regard, a grand view of history is particularly significant. In other words, observing China, writing a book about China, and commenting on the history of China, naturally, one has to proceed from China and to highlight China; otherwise, one is no longer working on the history of Chinese rule of law, but the history of the influence of the Western rule-of-law concept on the rule of law in China and the development of Western methods in China since modern times. It should be noted that the "change" of the Chinese legal system includes the changes of ancient China as well as the change between ancient China and modern China; this involves understanding of unification of China's rule-of-law development process with China's historical development process. In this regard, the assertion that China's rule-of-law modernization is accompanied by the "disintegration" of Chinese legal system is clearly rooted in deliberately highlighting the changes of China's rule of law. This assertion poses a peril of artificially compartmentalizing the historical development of China.

"Constant" is a benchmark relative to "change," while "change" is deep-rooted in its internal drive. The internal demand for the rule of law in China is the internal basis and deep-seated reason for the modernization of China's rule of law. In the process of its formation and development, the Chinese legal system has gained momentum for further changes. The changes from ancient to modern rule of law are not the result of purely external drive, but have profound internal root-causes. "The external driving force of China's modern transformation is crucial. But the internal drive should also be given attention. The significant boost generated by the high integration of internal and external driving forces is the essential reason why China's modern transformation is an irreversible torrent."[43] The introduction of Western law significantly has impacted the Chinese legal system. To land a foreign legal system and its rule-of-law concept, benign political soil and ideological

42 CHENG Shude, 论语集释 (*Notes to The Analects of Confucius*), punctuated and collated by CHENG Junying & JIANG Jianyuan, Zhonghua Book Company, at 127 (1990).

43 See REN, fn. 41 at 51.

resources are needed, instead of simply external drive; internal demand for the development of rule of law is also needed. At a specific historical stage, Western law and its concept of the rule of law provided some beneficial elements in advancing the rule of law in China, but these elements should be integrated into the spiritual and cultural foundation of China's internal logic of rule of law, and should eventually create a strong force to promote the rule-of-law practice in China.

Therefore, Chinese rule-of-law modernization has its own internal logic, which is unified with the evolution of the Chinese legal system. The modernization of rule of law in China is a new stage in the development of the legal system, and it is also a new stage in which the Chinese nation can explore self-governance.

B | New Stage of Chinese Legal System Is the Concrete Embodiment of Chinese Modernization in the Domain of the Rule of Law

"Worldwide modernization began with the rise of capitalism in Europe, while China's modernization began with the enlightenment in the late Qing Dynasty and the early Republic of China; the modernization of the rule of law was awakened in that particular historical wave. In the world trend of modernization of rule of law, the formation and expansion of this modernization in China is a great creation of human rule-of-law civilization, showing a unique historical track and distinctive China features."[44] Chinese modernization of the rule of law is not the result of pure external drive, but has profound internal roots. The Chinese path of modernization of the rule of law has no imitators or established models. It is a new journey for the Chinese nation to explore self-governance, a new achievement of Chinese civilization, and a concrete embodiment of Chinese modernization in the domain of the rule of law.

The modernization of rule of law in China is a new stage of the Chinese legal system, and is characterized by a new problem, a new path and a new contribution. In modern times, the Chinese nation has been confronted with unprecedented domestic turmoil and foreign aggression, just as the highly influential Qing Dynasty official LI Hongzhang put in the memorial Suggesting Not Stopping Financial Support for Shipbuilding, "The world has gone through a major change unseen over the past three thousand years."[45] Western countries did not offer any ready-made answers. "In modern times, some attempted to clone the Western rule of law model in China, but all such efforts ended in failure."[46] "The great social transformations that contemporary China has undergone are not a natural continuation of our country's historical and cultural traditions, not a mechanical

44 ZHANG Wenxian, 论中国式法治现代化新道路 (On the New Path to Modernization of Chinese Rule of Law), 1 中国法学 (*China Legal Science*), 6 (2022).

45 LI Hongzhang, 筹议制造轮船未可裁撤折 (Suggesting Not Stopping Financial Support for Shipbuilding) (May 15, 11th year of Emperor Tongzhi Reign), in GU Tinglong & DAI Yi, 《李鸿章全集》第5册 (*The Complete Works of LI Hongzhang*), Vol. 5, Anhui Education Press, at 107 (2008).

46 See XI, fn. 19 at 290.

application of the templates designed by authors of Marxist classics, nor a copy of the socialist practice in other countries or foreign models of modernization."[47] After experiencing setbacks and hardships, the Chinese nation eventually identified the path to the rule of law, linking China's tradition of rule of law with China's practice of rule of law, and blazed a new rule-of-law path suitable for China. "History and reality have told us that while we can learn and benefit from foreign experience in the rule of law, we can only consolidate the legal foundations for building China into a modern socialist country and realizing the great rejuvenation of the Chinese nation."[48] The new path chosen by the Chinese nation in the face of the new problem also provides new plans and makes new contributions to law-based human civilization and to the path of human modernization. "The CPC will unite and lead the Chinese people in pressing ahead with the Chinese modernization to make new contributions to humanity's search for ways to modernize."[49]

IV The Chinese Legal System and the Great Rejuvenation of the Chinese Nation

The great rejuvenation of the Chinese nation cannot be separated from the rejuvenation of the Chinese rule-of-law civilization, which means that the Chinese legal system, with China characteristics and with world significance, will return to center-stage of the world rule-of-law development. The modernization of the rule of law in China is a Chinese modernization and a new stage of the development of the Chinese legal system. This determines that the revival of law-based Chinese civilization has to be based on socialist rule of law with Chinese characteristics, and "our rule of law should focus on China and the times. It must be rooted in China to solve Chinese issues and advance the creative transformation and development of fine traditional Chinese culture."[50] China's rule of law civilization also needs to draw on the best of other civilizations and to take a new path of modernization.

A | Socialist Rule of Law with Chinese Characteristics

The modernization of Chinese-style rule of law is a new phase of the Chinese legal system, meaning that it is based on reality and on socialist rule-of-law with Chinese characteristics. "We have our history and culture, our institutions and mechanisms, and our national conditions. Our national governance has incomparable particularity and complexity in the world, and has our

47 中共中央关于党的百年奋斗重大成就和历史经验的决议 (*Resolution of the Central Committee of the Communist Party of China on the Major Achievements and Historical Experience of the Party over the Past Century*), adopted at the Sixth Plenary Session of the 19th Central Committee of the Communist Party of China on November 11, 2021, 人民日报 (*People's Daily*), Dec. 17, 2021.

48 See XI, fn. 19 at 290.

49 XI Jinping, 加强政党合作 共谋人民幸福——在中国共产党与世界政党领导人峰会上的主旨讲话 (*Strengthening Cooperation Among Political Parties to Jointly Pursue the People's Wellbeing*—At the CPC and World Political Parties Summit), 人民日报 (*People's Daily*), Jul. 7, 2021.

50 坚持党的领导传承红色基因扎根中国大地，走出一条建设中国特色世界一流大学新路 (*Blazing a New Path to Develop China's World-Class Universities*), 人民日报 (*People's Daily*), Apr. 26, 2022.

own long-term accumulated experience and advantages. We must not underestimate ourselves and should cherish the best of our traditions and culture."[51] Proceeding from the reality of China, we should pay full attention to the fine traditional Chinese legal culture while not excluding the best of other legal civilizations. "We must base our work on the prevailing conditions in China. A country's basic conditions determine the path it will take to promote the rule of law and the system it will establish for the rule of law. In the book of Lord Shang (Shang Jun Shu) it is written: 'In governing a country, a wise ruler establishes laws through observing popular customs, thus bringing order. He understands the fundamentals of the land he rules, thus implementing appropriate policies. Where the customs of the times are ignored and the fundamentals of the land neglected, the people will fall into disorder even when laws are made. And the ruler may be kept busy but will achieve little.' Therefore, in our efforts to advance the rule of law, we must base our work on the realities of China and in line with our push to modernize the country's governance system and governance capacity. In this effort, we can neither afford to disregard the conditions that currently prevail in our country and race ahead of ourselves, nor can we afford to simply stick to old ways and guard old conventions."[52] Leading the Chinese people, the CPC proceeds from the strategy of national rejuvenation within the context of global changes of a scale unseen in a century, learns from historical experience and explores the great practice of the law-based development path suitable for China. Upholding and consolidating the Party's overall leadership is the fundamental political essence of socialist rule of law with Chinese characteristics. "The CPC leadership is the soul of socialist rule of law with Chinese characteristics and the biggest difference between our rule of law and that of Western capitalist countries."[53] "In keeping to the path of socialist rule of law, the most important thing is that we uphold the leadership of the Party."[54] "Proceeding from reality in all it does, the CPC has led the Chinese people in finding, through trial and error, the path of socialism with Chinese characteristics. History and practice have proven and will continue to prove that this is not only the correct path that works, but also the sure path that pays off. We will unswervingly follow the path leading to a bright future to ensure that development is pursued for both our own good and the benefit of the world."[55]

B | Learn the Rule of Law Achievements of Other Countries

The modernization of rule of law in China

51 XI Jinping, 全面做好法治人才培养工作 (Developing Human Resources for Law-Based Governance), May 3, 2017, in 论坚持全面依法治国 (*XI Jinping Selected Works: Exercising Law-Based Governance on All Fronts*), Central Party Literature Press, at 176 (2020).

52 See XI, fn. 3 at 110.

53 XI Jinping, 在省部级主要领导干部学习贯彻党的十八届四中全会精神全面推进依法治国专题研讨班上的讲话 (Speech at a Study Session on Implementing the Decisions of the Fourth Plenary Session of the 18th CPC Central Committee and Advancing the Rule of Law, Attended by Officials at the Provincial/Ministerial Level), in 习近平关于全面依法治国论述摘编 (*XI Jinping Selected Works on Exercising Law-Based Governance on All Fronts*), Compiled by Party Literature Research Center of CPC Central Committee, Central Party Literature Press, at 35 (2015).

54 See XI, fn. 3 at 106.

55 See XI, fn. 49.

should be based on the socialist rule of law with Chinese characteristics and with the associated political essence, on the foundations of China's political system, and on learning the rule of law achievements of other countries. "Diversity is what defines our world and makes human civilization fascinating."[56] It is necessary to promote exchanges and mutual learning between Chinese civilization, Chinese rule of law civilization in particular, and civilizations of other countries. With regard to the rich and colorful world, we should adopt an inclusive attitude, modestly learn the good things of others, digest and absorb the good things of others from an independent standpoint, and turn them into our own good things. Copying the political systems of other countries will not work, and will even bury the future and destiny of the country. Only a system that takes root in the country's soil and absorbs abundant nutrients is the most reliable and effective. Mere copying could even spell an end to the independent destiny of our country. Only a system deeply-rooted and fully nourished in our own soil is trustworthy and will serve our purposes.[57] Learning the achievements of other civilizations, on the one hand, we must digest and absorb them, so as to organically integrate them into the building of the socialist rule of law with Chinese characteristics. "We must learn from the achievements of other countries. However, learning from others does not equate to simply copying them. Putting our own needs first, we must carefully discern between the good and the bad and adopt the practices of others, within reason. Under no circumstances can we engage in 'all-out Westernization,' or a 'complete transplant' of the systems of others, or copy from other countries indiscriminately."[58] Furthermore, after such learning and transformation is made, we should contribute more to the rule of law civilization development. "We should actively learn the best of other rule-of-law civilizations, but we should also selectively integrate them. We should never follow others without trying to understand them properly, otherwise they will not work in China. As an old Chinese saying goes, 'To the south of the Huaihe River grow oranges, while to the north grow bitter orange.' On this subject, we are fully confident and prepared to contribute to the development of global rule of law with Chinese wisdom and practice."[59]

C | Creative Transformation and Development

"Resolution of the CPC Central Committee on the Major Achievements and Historical Experience of the Party over the Past Century" adopted in 2021 points out: "China's fine traditional culture is a prominent strength of our nation that enables us to gain a firm footing amidst global cultural interaction. We must adapt to new conditions so that we can carry on our traditional culture in the new era."[60] "The Chinese legal system

56 XI Jinping, 同舟共济克时艰, 命运与共创未来 (Pulling Together Through Adversity and Toward a Shared Future for All—Video Keynote Speech at the Opening Ceremony of the 2021 Annual Conference of the Boao Forum for Asia), 中国日报 (*People's Daily*), Apr. 20, 2021.
57 See XI, fn. 40 at 78.
58 See XI, fn. 3.
59 See XI, fn. 51 at 177.
60 See XI, fn. 47.

is the crystallization of the rule of law of the Chinese nation. It has various thoughts and concepts that transcend time and space, have universal value and are worth recalling, inheriting and developing."[61] The modernization of Chinese rule of law needs to further study and summarize the development law of the Chinese legal system, extract legal thinking, legal theory, legal system and rule of law principles that transcend time and space, fully explore the system, culture and technical resources, and realize the creative transformation of the Chinese legal system. For example, the concepts and theories such as "the idea of prudence that prioritizes moral enlightenment over legal punishment" are the most significant features of the Chinese legal system, and they show "the Chinese legal system's pursuit of morality and its emphasis on ethical order."[62] XI Jinping emphasized at the 37th group study session of the Political Bureau of the CPC Central Committee: "Law is a set of virtues in writing; virtue represents the law in one's inner world. Both function to regulate people's conduct and social relations and maintain social order, yet each plays a different role in national governance. Law ensures social stability while virtue nourishes the mind. Effective law enforcement depends on the good practice of virtue while virtue must work within legal restraints. The rule of law and the rule of virtue are inseparable and must be balanced and coordinated for better national governance."[63] "We must integrate the rule of law with the rule of virtue. Regulating people's behavior, the law can punish illegal behavior compulsorily, but cannot address people's ethics. China always emphasizes that rule of law and rule of virtue should complement each other, and law and virtue should be equally applied. The law means heteronomy while virtue is self-discipline, so they function to support each other."[64] "Integrating the rule of law with the rule of virtue" is a typical example of creative transformation and innovative development of the thoughts that "the rule of virtue is the mainstay while the rule of law is the auxiliary" and that "moral enlightenment has priority over legal punishment." "To promote the creative transformation and innovative development of fine traditional Chinese culture is to nurture the root and soul of the national rejuvenation." "We must uphold fundamental principles and break new ground, and promote the adaptation of fine traditional Chinese culture to our socialist society. Moreover, we must advance the cultural identity of the Chinese nation, and do more to foster a Chinese spirit, Chinese values, and Chinese strength."[65] The creative transformation and development of the Chinese legal system is not a simplistic representation or reminiscent

61 See ZHANG, fn. 44 at 12.

62 MA Xiaohong, "中华法系"中的应有之义 (The Due Meaning of Chinese Legal System), 3 中国法律评论 (*China Law Review*), 126 (2014).

63 坚持依法治国和以德治国相结合, 推进国家治理体系和治理能力现代化 (Combine the Rule of Law with the Rule of Virtue, Modernize the National Governance System and Capacity), 人民日报 (*People's Daily*), Dec. 11, 2016.

64 XI Jinping, 严格执法, 公正司法 (Ensuring Law Is Strictly and Impartially Enforced), Jan. 7, 2014, in 论坚持全面依法治国 (*XI Jinping Selected Works: Exercising Law-Based Governance on All Fronts*), Central Party Literature Press, at 51 (2020).

65 See XI, fn. 12 at 7.

of historical tradition. Instead, it finds the convergence point between traditional Chinese rule of law culture and socialist rule of law with Chinese characteristics under the new-era historical conditions, and innovates the culture of socialist rule of law with Chinese characteristics. Traditional Chinese rule of law culture, the crystallization of China's rich experience in governing ancient China, has uniqueness to China. Also, it is highly significant to the contemporary practice of rule of law. Based on the overall strategy of implementing national rejuvenation amid global changes of a magnitude not seen in a century taking place in the world, fine Chinese traditional rule of law culture is particularly prominent in building the socialist rule of law with Chinese characteristics. It promotes the overall rule of law and realizes the great rejuvenation of the Chinese nation.

V Conclusion

With a wealth of significant heritage, the Chinese legal system is time-honored, profound and far-reaching. A major achievement of the Chinese nation's exploration of self-governance, the Chinese legal system is the crystallization of the wisdom and spirit of the Chinese nation's rule of law, and a dazzling pearl in the history of the development of the world's rule of law civilization. On the merit of its brilliant achievements, the Chinese legal system has attracted worldwide attention. Only by converging the rule of law tradition with the rule of law practice, and by finding the direction of rule of law development, can we truly transcend the technical aspects such as legislation and justice trials, and deeply understand the uniqueness of the Chinese legal system from the perspective of national governance and of law and order. The internal logic of the rule of law reform and development in the Chinese nation has passed down without disconnection for thousands of years and is, essentially, a great practice of the Chinese nation. "Independence is the essence of China's national spirit." "Throughout human history, no nation or country has ever become strong and prosperous by relying on external forces, indiscriminately copying the models of other countries, or blindly following in others' footsteps. Those who have attempted to do so have either suffered inevitable defeat or been reduced to vassals of others."[66] External factors have directly kicked off the rule-of-law modernization process in China, but such a kick-off was not based on the "disintegration" of the Chinese legal system. External factors have directly impacted the rule of law modernization process in China, and this has led to the intergenerational replacement of the legal system. However, the modernization of rule of law in China is an exploration by the Chinese nation of that process. It is a concrete embodiment of Chinese rule of law modernization, and a new phase of the Chinese legal system. During modern times, the Chinese nation has gone through arduous exploration of rule of law development, and finally found its own path under the CPC leadership. "That is to say, China has achieved dozens

66 See XI, fn. 47.

of successes in its efforts to establish the rule of law, some large and some small. But ultimately these achievements boil down to one thing, and that is the path of socialist rule of law with Chinese characteristics."[67] "The path of socialist rule of law with Chinese characteristics fully represents the achievements and experience of socialist rule of law. It is the only correct path to take to advance the rule of law in a law-based socialist country."[68] This is the rule of law pathway that is most suitable for China's national conditions and the only correct path towards realization of the great rejuvenation of the Chinese nation. Since the 18th CPC National Congress in 2012, XI Jinping has led the whole Party in the great practice of law-based governance on all fronts, profoundly summing up the ancient Chinese tradition of rule of law, its success and failure, and excavating and inheriting the essence of fine Chinese traditional legal culture. The practice endows the Chinese legal system and Chinese civilization with new contemporary meaning, so as to make them grow with new vitality. Since the 19th CPC National Congress in 2017, the CPC Central Committee has put forward strategic objectives and important measures for building a modern socialist country and for implementing the national rejuvenation strategy within a wider context of the once-in-a-century changes taking place in the world. "At present, the world is undergoing profound changes unseen in a century, and has entered a new period of turbulence and transformation. It is imperative to answer the questions of our times: What has happened to the world? Where will humanity go? We must continue to integrate the basic tenets of Marxism with China's actual conditions and with fine traditional Chinese culture, and continue to adapt Marxism to the Chinese context and our times, bearing in mind both the overall strategy of the great rejuvenation of the Chinese nation and the profound changes unseen in the world in a century."[69] XI Jinping Thought on the Rule of Law conforms to the requirements of the times to realize the great rejuvenation of the Chinese nation, and deeply understands the basic laws of governing the country, the laws of socialist rule of law building, the laws of the rule-of-law human civilization development. It repositions Chinese legal system in terms of linking history with reality, linking international and domestic relations, and combining theory with practice. In the new phase of the Chinese legal system, China has run into major theoretical and practical problems that have never been encountered in the rule of law in the West and that have never been talked about by Western jurists, but these problems have been creatively solved and systematically summarized. In this new phase and based on the practice of socialist rule of law with Chinese characteristics, the CPC is leading Chinese people to inherit the fine traditional Chinese legal

67 See XI, fn. 3 at 105.

68 XI Jinping, 关于《中共中央关于全面推进依法治国若干重大问题的决定》的说明 (Explanation of the Resolution of the Central Committee of the Communist Party of China on Certain Major Issues Concerning Comprehensively Advancing the Law-Based Governance of China), Oct. 23, 2014, in 论坚持全面依法治国 (*XI Jinping Selected Works*: *Exercising Law-Based Governance on All Fronts*), Central Party Literature Press, at 93 (2020).

69 See XI, fn. 50.

culture, absorb the outstanding rule of law civilization achievements in the world, and to stride forward on the correct path suitable for China's national conditions. To combine Marxist rule of law theory with the rule of law practice development in China, and with the fine traditional Chinese legal culture, has been an important achievement. Upholding the overall leadership of the CPC and moving forward firmly along the new path, the Chinese legal system with Chinese characteristics and with world significance will surely return to center-stage of global rule of law development. The new phase of the Chinese legal system will promote new development of Chinese legal civilization, promote the great rejuvenation of the Chinese nation, make huge and original contributions to the development of human legal civilization, and will create a new form of human legal civilization.