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China School of Rule of Law Practice

# CHINA 中国法治实践学派

钱弘道 主编



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#### 卷首语

#### 中国法治实践学派的重大任务

钱弘道

从世界范围看,中国的法治道路与其他任何国家的法治道路是不一样的,也不可能一样。

从世界范围看,基于中国法治实践产生的理论必然区别于其他国家的一切法治理论。

从世界范围看,针对中国法治实践问题,中国学者一定会创造出一个区别于世界上一切流派的法学流派。

这个学派正在形成。

这个学派,我们把它称为"中国法治实践学派",或者"法治实践的中国学派"。

中国法治实践学派,顾名思义,它是一个问题性学派,研究的问题是"中国法治实践";它也是一个地域性学派,这个地域是中国。

中共中央《关于全面推进依法治国若干重大问题的决定》(以下简称《决定》)清楚地诠释了中国法治实践学派的基本特征和当前任务。《决定》指出:"坚持从中国实际出发。中国特色社会主义道路、理论体系、制度是全面推进依法治国的根本遵循。必须从我国基本国情出发,同改革开放不断深化相适应,总结和运用党领导人民实行法治的成功经验,围绕社会主义法治建设重大理论和实践问题,推进法治理论创新,发展符合中国实际、具有中国特色、体现社会发展规律的社会主义法治理论,为依法治国提供理论指导和学理支撑。汲取中华法律文化精华,借鉴国外法治有益经验,但绝不照搬外国法治理念和模式。"这一内容与中国法治实践学派的宗旨完全一致。

中国法治实践学派的目标是"推进法治理论创新,发展符合中国实

际、具有中国特色、体现社会发展规律的社会主义法治理论"。中国法治实践学派要科学阐述全面推进依法治国的若干原则,要为完备的法律规范体系、高效的法治实施体系、严密的法治监督体系、有力的法治保障体系、完善的党内法规体系提供科学的论证,要为依法治国、依法执政、依法行政的共同推进和法治国家、法治政府、法治社会的一体建设提供坚实的理论支撑,要为实现科学立法、严格执法、公正司法、全民守法,促进国家治理体系和治理能力现代化竭尽全力。

中国法治实践学派强调"现实"。中国法治实践学派的一切理论都从一个基本原则出发,即"坚持中国实际"。它要求在实施不同的法治方法时,时刻考虑中国的实际情况。

中国法治实践学派强调"实践"。中国法治实践学派的一切任务都 "紧紧围绕社会主义法治建设的重大理论问题和实践问题",坚持以马克 思主义实践观为基本方法论。

中国法治实践学派强调"实效"。中国法治实践学派追求的实效就是 要"为依法治国提供理论指导和学理支撑"。它既重视顶层设计,又强调 切实管用;既讲近功,又求长效。

中国法治实践学派积极弘扬社会主义法治精神,致力于法治启蒙的实际行动。《决定》指出:"全面推进依法治国是一个系统工程,是国家治理领域一场广泛而深刻的革命,需要付出长期艰苦努力。"这场革命既是制度的,也是观念的。观念的革命需要启蒙。没有法治启蒙运动,中国法治精神就难以得到真正培育。

中国法治实践学派的竞争对手在国外。它绝不是在中国占领一个学术山头。它是跨学科的、跨地域的,甚至是跨国界的。它要努力在国际法治舞台上展开博弈,它要努力为中国赢得法治话语权,它要努力为世界法治文明提供中国元素。

围绕《决定》而展开的中国特色社会主义法治理论研究正在为中国法治实践学派的发展创造重大契机和广阔舞台。一大批具有现实主义精神、实践主义精神、实证主义精神、实验主义精神的法学家正在为法治中国理论建设和中国法治实践学派的发展贡献自己的智慧和力量。

意大利著名财经专家洛丽塔·纳波利奥尼(Loretta Napoleoni)在《中国道路》一书中说:"从捍卫人权到发展可再生能源,从世界贸易组织相关

规则的遵守到大力发展参与民主,中国似乎正在致力于塑造一个全新的社会模式。"当全面推进依法治国这场治理领域的深刻革命取得重大成就的时候,中国特色社会主义法治理论将趋于成熟,中国法治实践学派也将改变世界法学流派格局。

谁也无法拒绝中国道路,谁也无法拒绝中国理论,谁也无法拒绝中国学派,因为很多已经是事实,一切正在变成事实,一切都会变成事实。

2015 年 6 月 15 日 于弘道书院

#### **Preface**

Major Tasks of China School of Rule of Law Practice

Qian Hongdao

From a global perspective, the path of the rule of law in China is different from those in any other country and it would be impossible to be completely the same.

From a global perspective, the theory generated by the practice of the rule of law in China is different from the theory of the rule of law in any other country.

From a global perspective, as to the practice of rule of law in China, Chinese scholars are creating a new school of legal thought which is different from other schools of legal thought all over the world.

Now, this school is well on the way.

It has been named the "China School of Rule of Law Practice" (the CSRLP) or the "China Practical School of Rule of Law".

The CSRLP, just as the name implies, is a school on practical issues, and the issues are on the practice of the rule of law in China. The CSRLP is a regional school, and the region is China.

The Resolution of the CPC Central Committee on Certain Major Issues Concerning Comprehensively Advancing the Law – Based Governance of China explicitly explains the basic characteristics and current tasks of the CSRLP. The Resolution points out that, "We must base all we do on the actual situation in China. It is required to proceed from the fundamental national conditions of China, and get accustomed to the increasingly deepening of reform and opening up; it is required to conclude and implement

the successful experience of rule of law implemented by the Party and people; it is required to focus on important theoretic and practical issues of socialist rule of law construction, and promote theoretical innovation regarding the rule of law; it is required to develop a theory of socialist rule of law, which conforms to the actual situation in China, has Chinese characteristics and manifests social development rules; it is required to provide theoretical guidance and scientific, principled support for the law – based governance of China. In addition, it is required to derive the essence from Chinese law culture, draw on the beneficial experiences of rule of law in abroad but never indiscriminately imitate foreign concepts and patterns." These goals are completely consistent with the tenets of the CSRLP.

The task of the CSRLP is to "promote theoretical innovation regarding the rule of law and develop a theory of socialist rule of law, which conforms to the actual situation in China, has Chinese characteristics and manifests social development rules." The CSRLP shall scientifically expound the principles of comprehensively advancing the law - based governance of China. The CSRLP shall provide scientific support for forming a complete systems of laws and regulations, a highly effective system to ensure the rule of law is put into effect, a stringent system to oversee the implementation of the rule of law, a robust system to guarantee the rule of law, and a well defined system of Party rules and regulations. The CSRLP shall provide solid theoretical support for making coordinated efforts to promote law - based government, law - based exercise of state power, and law - based administration of government, as well as adopting a holistic approach to the development of rule of law country, government, and society. The CSRLP shall do its best to ensure that a scientific approach is taken to legislation, that law is enforced strictly, that justice is administered impartially, and that the law is observed by everyone. The CSRLP shall do its best to modernize our country's governance system and capacity for governance.

The CSRLP stresses "reality". That is, all the theories of the CSRLP are based on the actual situation in China. It requires the implementation and

testing of different rule of law approaches, always taking into account the actual situation in China.

The CSRLP stresses "practice". All the tasks of the CSRLP closely "focus on important theoretic and practical issues of socialist rule of law construction", and adhere to Marxist viewpoints of practice as the basic methodology.

The CSRLP stresses "effectiveness". Specifically, the CSRLP strives to "provide theoretical guidance and scientific, principled support for the law – based governance of China. " It not only attaches importance to the top – level design, but also emphasizes practical utility, and it pursues achievement of both current goals and long – term benefits.

The CSRLP actively promotes the socialist rule of law spirit and it is dedicated to practical action of the rule of law enlightenment. The Resolution points out that "comprehensively advancing the law – based governance of China is a systematic project and a widespread and profound revolution in national governance field, which requires long – term strenuous efforts." It is not only an institutional but an ideological revolution. The ideological revolution requires enlightenment, as it is difficult to cultivate a Chinese rule of law spirit without a rule of law enlightenment.

The rivals of the CSRLP are in foreign countries. It is anything but taking one academic highland in China. It is interdisciplinary, geographically dispersed and even cross – border. It is trying hard to attend the competition on the global stage of rule of law. It is trying hard to win the discourse right of rule of law for China. It is trying hard to provide Chinese factors for the culture of rule of law in the world.

Studies regarding the theory of socialist rule of law with Chinese characteristics, which are consistent with the Resolution, have provided major opportunities and a vast stage for the development of the CSRLP. A large group of jurists with a spirit of realism, activism, positivism, and experimentalism are contributing their wisdom and strength to the theory of the rule of law in China and the development of the CSRLP.

In Maonomics: Why Chinese Communists Make Better Capitalists Than We Do, Loretta Napoleoni, a famous Italian finance expert, states that "from the defense of human rights to the development of renewable energy, going so far as to include respect for the rules of the World Trade Organization (WTO) and aspirations to participatory democracy, this nation seems fully committed to producing a new model of society." When the profound revolution of comprehensively advancing the law – based governance of China is achieved, the theory of socialist rule of law with Chinese characteristics will mature and the CSRLP will change the structure of schools of legal thought around the world.

No one could refuse Chinese path; no one could refuse Chinese theories; no one could refuse Chinese schools. It is because many of them have already been the facts. Everything is becoming the fact, and everything will turn into facts finally.

On June 15,2015 At Hongdao Academy

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