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Editors' Foreword

Since its establishment in 1904, Peking University Law School has remained as the leading institution of legal education and research in China, engaging in a broad range of academic discourse and collaboration at home and abroad. China has become the focus of the whole world, and this extends far beyond it hosting the Olympics. While China's great achievements are widely recognized, concerns remain regarding sustainable sound development and structural problems. As scholars committed to the betterment of China, we feel obligated to explore and discuss reasons and possible solutions to issues the country is facing today. Through these articles, the *Peking University Journal of Legal Studies* is proud to contribute a little piece to this endeavor of advancing global understanding of legal issues in China.

In this inaugural issue, we have assembled a fascinating collection of eight works. On the basis of contextualized reading, Suli's *An Economic Analysis of Hai Rui's Judicial Theorems* abstracts two judicial laws from Hai Rui's statements: that of equity and that of discrimination. By revealing and elaborating on the rationale behind these laws from a theoretical and socio-historical perspective, the article seeks to demonstrate an implicit yet convincing economic logic based on subjective marginal utility. It further extends the more controversial law of discrimination to two areas: the domain of criminal justice to support the doctrine of the presumption of innocence; and the domain of civil justice to propose the concept of the "personified object," so as to demonstrate its theoretical strengths.

Wang Xixin's *The Public, Expert, and Government in the Public De-*

cision-Making Process discusses the structural problems of public decision-making in China through the study of the system of price decision-making hearings. By examining different roles in the hearing system, the author finds that process of decision-making hearings are always monopolized by the government and lack substantial public participation. This is partly because of the unilateral emphasis on the government authority—a kind of blind faith in technical methods and positivism and the monopolistic "knowledge—power" structure in the public decision system. All this has led to a crisis of public confidence in the system of public decision-making. In order to break this monopolistic "knowledge—power" structure, the author proposes to stress the public's dual role as citizen and "knowledge carrier". By participating in the making of public policy, the public can be empowered through communication and learning, which justifies and rationalizes the public decision-making. This way of decision-making also indicates the perspective of "deliberative democracy" in public policy.

Fu Yulin's *A View of Rural Grass-roots Legal Services Offices in China* focuses on the Chinese grass-roots legal services office, which mainly provides legal services to citizens, legal persons, and other organizations in the county and rural society. After a series of serious research work, such as a literature survey at the national level and empirical investigations at the local level, the author analyzes the theoretical background and the historical process of the Chinese grass-roots legal services office, makes a comprehensive view about the status quo, and describes its development. Finally, the author emphasizes that when the decision-makers reform the legal services offices, they should lessen the regulations in order to promote this kind of organization, but not underestimate or even dismiss them.

Zhao Guoling's *An Investigative Analysis of Homicide Victims in China* points out that as homicide crimes involve the deprivation of human life, they have been universally recognized as the most violent of all crimes. Research on homicide victimization is crucial in acknowledging homicide crimes, but it is severely lacking in China. Relying on 1,707 homicide cases in Shenzhen city and Inner Mongolia as samples, this article provides a comprehensive and descriptive analysis of victimization

in these respective regions. These two regions differ in their level of economic development and geography. One is economically developed and is situated on the Southern coast, whereas the other is developing and located inland to the West. Given the representative nature of these two regions, the data and analysis thereof, may be applied to the homicide victimization throughout China.

Wang Shizhou's *Report on Copyright Criminal Law in the World* is of great value for the government and legislators to improve Chinese copyright criminal law. Firstly, the author demonstrates the requirement of TRIPS by anatomizing Article 61 of the agreement. He then coducts some comparative research by summarizing many states' or regions' copyright criminal laws, typically in the main legal systems. At last, after analyzing the current Chinese copyright criminal law, the author describes the gap between Chinese legislation and the international standard, and gives his suggestion to help the government construct a powerful legal system to protect Intellectual Property Right.

Zhang Ping's *An Analysis on Antitrust Regulation of Patent Pools* points out that a patent pool is regarded as a solution to the quandary created by the "patent thicket," a phenomenon that increasingly subjects the development of industries to the mercy of many independent patent holders' exclusive rights. As a way out, a patent pool can integrate complementary technologies, reduce transaction costs, clear blocking positions, and avoid costly infringement litigation. However, a patent pool also has negative aspects. Because the patent pools are also a form of agreement between companies with inherent anticompetitive potential, they are often controlled by multinationals housing swarms of patents worldwide. This is especially true for patent pools built alongside Information and Communication Technology standards, and there is now a visible trend that such patent pools are becoming a tool for abusing market power, as well as a means to stifle innovation. Therefore, a patent pool was and is susceptible to antitrust review.

The importance of a deposit insurance system to countries like China cannot be exaggerated. Lou Jianbo's *Introducing a Deposit Insurance System into China* focuses on designing a deposit insurance program to fit China's needs, with references to international experiences and lessons.

It starts with a brief survey on deposit insurance programs worldwide, followed by literature reviews on pros and cons of deposit insurance and a careful evaluation of China's existing implied Government guarantee. Following a preliminary finding on the necessity of replacing China's existing implied Government guarantee with implicit deposit insurance, the author gives a list of various issues and principles to be considered in designing China's deposit insurance system. Answers to questions raised are also provided. The author's proposals are given on the organizational structure, coverage, funding of China's deposit insurance system, how deposit insurance premiums shall be collected, membership of the deposit insurance system, etc. Then, instead of giving a timetable of introducing deposit insurance in China, he points out that once an explicit deposit insurance system is there, it shall replace the implied government guarantee completely.

Guo Li's *Financial Conglomerates in China: Legality, Model and Concerns* tells us that through recent amendments of its Commercial Bank Law and Securities Law, China has gradually softened its previous position mandating the segregation of financial business and supervision, as well as explored the financial conglomerate operation. Two models are considered in particular, namely the "universal bank" model, prevailing in Europe, and the "financial holding company" (FHC) model in the US. However, neither the universal bank nor the FHC model should be embraced hastily in China without a critical eye. While the FHC is a likely choice, it contains drawbacks and unsuitable aspects that merit discussion. Transforming State Owned Commercial Banks to public-held and independent entities must be a prerequisite and propellant to any meaningful structural reform, including the financial conglomerate issue.

CONTENTS

Text:

If I hold up one corner and a man cannot come back to me with the other three, I do not continue the lesson.

Confucius*

People swarm up and down the streets, all for profits.

Sima Qian**

I. INTRODUCTION

I suggest that in returning verdicts to those cases it is better to rule against the younger brother rather than the older brother, against the nephew rather than the uncle, against the rich rather than the poor, and against the stubbornly cunning rather than against the clumsily honest. If the case involves a property dispute, it is better to rule against the member of the gentry rather than the commoner so as to provide relief to the weaker side (The gentry will not hesitate to do anything, including false title documents, transgress and duress, in order to strip the commoner of their land, property and contractual rights. The rich are rarely kind toward the poor. And that is the reason why we need to provide relief to the weaker side). But if the case has to do with words and manners, it is better to rule against the commoner rather than against the gentry: the purpose is to maintain our order and system (Between the gentry and the commoner is the difference of status, therefore we need to maintain our order and system. The rule does not apply, however, if the gentry take reckless advantage of the commoner).[1]

The passage above is a summary of the personal judicial experience and ideals of Hai Rui, a local administrative officer in China's Ming Dy-

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* Confucius, "*Book Seven*," in *The Analects*, Arthur Waley trans, 外语教学研究出版社 1998 年版.

** 司马迁(Sima Qian), "货殖列传"(*Biographies of Merchants*),《史记》(*Historical Records*),中华书局 2006 年版,p. 752.

〔1〕 海瑞(Hai Rui), "兴革条例"(*Rules for Reforms*),陈义中编校(Chen Yizhong ed.),《海瑞集》(*Collected Works of Hai Rui*),中华书局 1962 年版,p. 117. It is suspected but not confirmed that the texts in the parentheses were notes added by the later editors of Hai Rui's works.

nasty. As there was no independent judiciary in ancient China and all judicial decisions were handed down by administrative officers, the passage cited above can also be regarded as a normative tenet prescribed by Hai Rui for judicial adjudication. In recent years, the paragraph has been regularly cited and commented upon by Chinese scholars.

The most influential and earliest citation to comment on this passage was written by Ray Huang, a Chinese-American historian.[2] Huang cited the paragraph to support his view that Hai Rui was a "model official" whose "direct application of moral law ... prevented the judicial system from maturing and attaining technical sophistication." Huang used this model to further illustrate the practice of "a literate bureaucracy managing the affairs of the agrarian masses" in traditional China. As there were no organizational or technological traditions that were "mathematically measurable," "court decisions had to be in harmony with ancient social norms. The lack of dimension and depth of governmental operations in turn made it mandatory to stress the personal virtue of its functionaries," and therefore modern capitalism did not flourish in China in the Ming Dynasty.[3] The works of Huang have achieved massive print-runs and wide-spread circulation,[4] and have exerted great influence on middle-aged and young scholars across various disciplines. For the past two decades, Huang's conclusions have practically become a verdict on the political and legal system of traditional China.

Legal scholars have inherited and developed Huang's proposition in different ways. In his article titled "Hai Rui and Coke"[5] published in

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〔2〕 Ray Huang, *1587, A Year of No Significance: The Ming Dynasty in Decline* (Yale University Press, 1981).

〔3〕 Id. p. 139.

〔4〕 The first Simplified Chinese edition of Huang's work, titled《万历十五年》(*The Fifteenth Year of Wan-li Emperor*), was published by the Chinese Press(中华书局) in mainland China in 1982. After that, Inner Mongolia Cultural Press(内蒙古文化出版社) published a new edition in 1995, and Sanlian Bookstore Press(生活·读书·新知三联书店) came forward with yet another edition in 1997. The edition published by Sanlian Bookstore Press has the largest number in print, reaching 263,000 copies as of the 21st printing in September 2005.

〔5〕 梁治平(Liang Zhiping),"海瑞与柯克"(*Hai Rui and Coke*),《思想家》1987, reprinted in 梁治平,《法辩——中国法的过去、现在与未来》(*On Law—The Past, Present, and Future of Chinese Law*),贵州人民出版社 1992 年版.

1987 and then in his book "In Pursuit of Harmony in the Natural Order", Liang Zhiping cited and analyzed Huang's passage. Liang's analysis is placid and neutral. Though in his book, Liang expressed a certain degree of cultural empathy with the passage, he nevertheless concluded that "such case law [as Hai Rui's] does not require any logic" and only needs to be "morally justified."[6] Following Liang, many legal scholars across various areas of specialization, ranging from legal culture and legal history[7] to civil law,[8] procedural law and adjudication,[9] have cited the passage repeatedly to illustrate the adoption in

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〔6〕 梁治平,《寻求自然秩序中的和谐》(*In Pursuit of Harmony in the Natural Order*),中国政法大学出版社 1997 年版,pp. 317—318.

〔7〕 邝少明、马作武(Kuang Shaoming & Ma Zuowu),"《圣经》·儒典·民商法基本原则"(*The Holy Bible, the Confucian Classics, and the Basic Principles of Civil and Commercial Law*),《学术研究》No. 4, 2001, p. 81;郑琼现(Zheng Qiongxian),"儒家义利观的法文化解读"(*A Legal-Cultural Interpretation of the Confucian Concept of Righteousness and Money*),《湖南师范大学社会科学学报》Vol. 6, 2001, p. 58;徐忠明(Xu Zhongming),"解读历史叙事的包公断狱故事"(*Interpretation of Judicial Stories of Baozheng as Historical Narration*),《政法论坛》No. 4, 2002, p. 144;徐忠明,"小事闹大与大事化小:解读一份清代民事调解的法庭记录"(*To Make Minor Disputes Sound Major and To Make Major Disputes Disappear: An Interpretation of the Court Records of a Mediated Civil Case in the Qing Dynasty*),《法制与社会发展》No. 6, 2004, p. 21, Note 119;徐忠明,"权利与伸冤:传统中国诉讼意识的解释"(*Rights and Redressing Injustices: An Interpretation of Traditional Chinese People's Concept of Litigation*),《中山大学学报》(社科版) No. 6, 2004, p. 208; 谭德贵(Tan Degui),"《周易》中的法律思想及其影响"(*The Legal Thoughts in Zhouyi and Its Influences*),《法学论坛》No. 4, 2003, p. 95;张晋藩(Zhang Jinfan),"综论独树一帜的中华法文化"(*A Comprehensive Analysis of the Unique Legal Culture of China*),《法商研究》No. 1, 2005, p. 142.

〔8〕 王志武(Wang Zhiwu),"中国古代民法不发达的文化原因初探"(*A Preliminary Inquiry into the Reasons Why Civil Law Did Not Flourish in Ancient China*),《贵州社会科学》No. 5, 1995, p. 47;简海燕(Jian Haiyan),"中国传统民法文化及其现代演进"(*Traditional Chinese Civil Law Culture and Its Modern Evolution*),《湖湘论坛》No. 4, 2003, p. 63.

〔9〕 For examples, see 贺卫方(He Weifang),"中国古代司法判决的风格与精神——以宋代判决为基本依据兼与英国比较"(*The Style and Spirit of Ancient China's Judicial Opinions: With Opinions from the Song Dynasty as a Basis and In Comparison with the U. K.*),《中国社会科学》No. 6, 1990(reprinted in,王好立等主编(Wang Haoli et al. eds.),《中国社会科学文丛》(法学卷)下册,中国政法大学出版社 2005 年版,p. 2481, Note 4);张成敏(Zhang Chengmin),"疑罪抉择与无罪推定"(*Dealing with Hard Cases and Presumed Innocence*),《四川公安管理干部学院学报》No. 3, 1996, p. 32;何力平(He Liping),"中国古代社会的司法道德"(*The Judicial Morality of Ancient Chinese Society*),《浙江政法管理干部学院学报》No. 3, 1996, p. 32;傅蔚蔚、张旭良(Fu Weiwei & Zhang Xuliang),"试论当前影响法官审判中立的三个基础性障碍"(*A Tentative Analysis of Three Basic Obstacles that Currently Pose Threats to Judicial Neutrality*),《华东政法学院学报》No. 5, 2000, p. 47;罗洪洋(Luo Hongyang),"程序正义与中国——从传统的视角观察"(*Procedural Justice and China: Observations from the*

traditional Chinese society of "different adjudicatory principles based upon the different social statuses of the parties to the action",[10] which in turn reflected a series of characteristics of traditional Chinese law.

As the Chinese legal profession engages in a resurgence of cultural re-assessment, self-criticism and transplantation of foreign legal concepts, the Hai Rui passage is increasingly recognized as encapsulating the under-development of traditional Chinese law and justice. Most modern day jurists believe that the "Hai Rui doctrine" should be relegated to the Chinese feudal age, a time which has long since passed.

Institutional economics experts have accepted Huang's views uncritically, though I will try to prove in this article that Hai Rui's arguments, in the context of Hai Rui's times, were in complete conformity with the principles of modern institutional economics or law and economics. As an example, Yao Yang, in his analysis of Hai Rui's passage, believes that "Hai Rui is a model for feudal officials. His ideas ... totally ignored 'inherent fairness' and only aimed to maintain a social hierarchy supported by blood relations, social status and moral characters, thus killing the commercial motives of society and making it unsurprising that capitalism did not grow up in China endogenously."[11] Zhang Jun argues that Hai Rui's "conception of property shows that he did not pay sufficient attention to the protection of private prop-

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Perspective of Traditions),《贵州省政法干部管理学院学报》No. 2, 2001, p. 6;夏新华(Xia Xinhua),"中国的传统诉讼原则"(*The Traditional Principles of Litigation in China*),《现代法学》No. 6, 2001, p. 100;李交发(Li Jiaofa),"古代中国司法官的处事风格与角色意识"(*The Judges' Style of Dealing with Issues and Their Sense of the Roles They Play*),《湘潭大学社会科学学报》No. 6, 2001, p. 64;吴泽勇(Wu Zeyong),"诉讼程序与法律自治——中国古代民事诉讼程序与古罗马民事诉讼程序的比较分析"(*Litigation Procedures and Legal Autonomy: A Comparative Analysis of the Civil Procedures of Ancient China and Ancient Rome*),《中外法学》No. 2, 2003;顾元(Gu Yuan),"中国传统衡平司法与英国衡平法之比较"(*A Comparison of Traditional China's Equitable Justice and U. K.'s Law of Equity*),《比较法研究》No. 4, 2004, p. 20;孙笑侠(Sun Xiaoxia),"中国传统法官的实质性思维"(*The Substantive Thinking of Traditional Chinese Judges*),《浙江大学学报》No. 4, 2005, p. 10;朱良好(Zhu Lianghao),"对我国传统诉讼文化的解读"(*An Interpretation of the Litigation Culture in the Chinese Tradition*),《内蒙古社会科学》No. 9, 2005, p. 19.

〔10〕 徐忠明,"小事闹大与大事化小:解读一份清代民事调解的法庭记录",supra note 7, p. 21 note 119.

〔11〕 姚洋(Yao Yang),"地域,制度与李约瑟之谜"(*Geography, Institutions, and the Myth of Joseph Needham*),《读书》No. 1, 2003, pp. 42—43.

erty. This made it difficult for the 'capitalist' system, which at the time represented an advanced system to organize production, to grow spontaneously in feudalist society."[12] Many economists, such as Li Guangfu, Xu Kangning, and Qiao Xinsheng,[13] and many scholars in other disciplines,[14] also quoted the passage or cited Huang's views time and again to support their argument that Chinese society did not pay much attention to the protection of private property and the country was governed by morality.

I share some of the intuitions of Huang and the authors cited above concerning the problems that existed in traditional Chinese society. Their model of historical norms and judicial practices is eloquent and illuminating, though I will argue that it is difficult for their model to stand theoretical or experiential tests. *Even if* Huang's theoretical model correctly interprets Hai Rui and accurately summarizes and describes traditional Chinese law and justice (though I doubt it), we are still unable to conclude that it was the reason a historical event did not take place. At the very least, this type of counter-factual deduction is very precarious.[15] The bot-

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〔12〕 张军(Zhang Jun),"中国的经济改革和发展:价值观的影响"(*China's Economic Reform and Development: The Influences of Conceptions of Values*),《江苏社会科学》No. 4, 2000, p. 3.

〔13〕 For example, 李光福(Li Guangfu),"中国传统的私有观"(*China's Traditional Conception of Private Ownership*),《生产力研究》No. 1, 2001, p. 55;徐康宁(Xu Kangning),"孤独的海瑞与当代内蒙的草地退化——透视中国私人财产权利制度的历史性缺失"(*The Lonely Hai Rui and the Degeneration of Grasslands in Modern Inner Mongolia-A Study of the Historical Lack of the System of Private Property Rights in China*),《东南大学学报》(社科版) No. 5, 2003, p. 19;乔新生(Qiao Xinsheng),"海瑞的错误法治观"(*Hai Rui's False Conception of Rule of Law*),《政府法制》March, 2005, p. 55.

〔14〕 For example, 周为民(Zhou Weimin),"传统中国能自发走向资本主义吗?"(*Could Traditional China Attain Capitalism Spontaneously?*)《战略与管理》No. 6, 1994, p. 107;张佩国(Zhang Peiguo),"农民的财产边界与近代中国司法的性质"(*The Boundary of Peasants' Property and the Nature of Modern Chinese Adjudication*),《河北大学学报》(社科版) No. 4, 2002, p. 26;孙乐涛(Sun Letao),"从技术的角度看历史"(*History Viewed from the Angle of Technologies*),《湘潭大学社会科学学报》No. 1, 2003.

〔15〕 For methodological criticism of similar theoretical hypothesis, see 冯象(Peter Feng),"法学方法与法治的困境(上)——学术论说中常见的方法论错误"(*Methodology of Law and the Dilemma of Rule of Law (Part 1 of 2): Methodological Mistakes Often Seen in Academic Discourse*),《北大研究生学志》No. 1, 2006;see also 向继东(Xiang Jidong),"圣经、普法及其他——冯象访谈录"(*The Bible, Promulgation of Laws and Other Topics: An Interview with Peter Feng*),《博览群书》No. 2, 2005, esp. pp. 64—66.

tom line is that the readings of Hai Rui's passage by Huang and the other authors, which form the basis of their arguments, are excessively careless, unsystemic, or simply wrong.

The writings of Hai Rui contain many discussions of administration and justice which indicate that Hai Rui was a very sensible, clear-headed administrative officer and judge. Furthermore, many of his analyses and arguments bear striking similarities to modern day legal and social science theory. Hai Rui believed that litigation arose mainly because of information asymmetry between parties and also because of unclearly defined property rights. Therefore, he argued that in order to reduce the number of court suits, people must "take care when meeting with strangers and enter into clear contracts when transacting," so that "there will be no causes for litigations to arise."[16] Hai Rui argued that judges on different levels should play differentiated roles—high level judges should make sure that lower level judges perform their responsibilities strictly, but should at the same time respect the trial judges' findings of relevant facts ("superiors should only supervise county magistrates and should not overthrow their judgments at will"), because of the necessity for credible evidence ("testimonies in the first hearing are invaluable, and those are precisely what county magistrates get") and the judicial need for local knowledge ("upper-level courts are far away from the people and therefore do not know the details", while "county magistrates are the most intimate to the people").[17] Seen from the perspective of judicial practice, all of these emphasized "personal experience" in adjudication, trial hearings and factual findings, as well as the "independence of judges." Such thinking also implied a recognition of the aspect of practical reasoning in judging. Hai Rui's analysis of the abuse of rhetoric in ancient trial opinions ("court documents ... contain many useless details, making it possible for the officials to hide their practice of twisting laws and impossible for others to investigate"[18]) also reminds modern scholars of the importance of questioning the rhetoric in judicial opinions, especially the importance of balancing the latent pros and cons of

〔16〕 海瑞,"兴革条例", supra note 1, p. 117.
〔17〕 Id., p. 116.
〔18〕 Id.

overly long arguments in judicial opinions and "written reviews". No one in the modern Chinese legal profession could hope to attain the depth and delicacy Hai Rui showed in his multiple-variable game-theory analysis of the problems inherent in over-ruling trial court decisions in appeals,[19] based upon his insight and analysis of the players, the institutional background and the rules of institutional operation of his time. The descriptions above do not intend to cover the full range of Hai Rui's legal thoughts. He did not go into details for many of his analyses or conclusions. It is probably because of this that it is worthwhile and possible for us to have an extended theoretical analysis and discussion.

This article is not a historical study aiming to reverse the political assessment of Hai Rui. Thinking is not acting, and a perceptive and penetrating thinker is not, and can hardly ever be, a successful politician. Neither does this article aim to set out Hai Rui's legal thoughts *in full*, which would not only be overly lengthy but may easily submerge the charm of theoretical analysis. The concern of this article is primarily theoretical and intellectual. I will start from Hai Rui's passage quoted at the beginning of this article and use the theories of modern law and economics to lay out and elaborate on the astonishing theoretical insights into law and economics latent in the judicial practice and discourse of Hai Rui of approximately 450 years ago. I will also try to generalize Hai Rui's contribution to Chinese historical legal thinking. I also hope to boost the law and social sciences movement, from both the historical and the Chinese perspective.

In Section II of this article, I shall address some inaccuracies made by Chinese scholars. I will use modern language to re-formulate the judicial thoughts of Hai Rui in the passage quoted as well as in his other relevant passages. From these, I shall extract Hai Rui's Judicial Theorem I (the fairness theorem) and Hai Rui's Judicial Theorem II (the difference theorem).

In Sections III, IV and V of this article, I will address some controversies surrounding Theorem II and will justify and demonstrate the reasonableness of Theorem II, especially Theorem II. B. I will demon-

[19] Id.

strate Hai Rui's balancing of fairness and efficiency and his economic logic, whether on a theoretical level or in particular examples.

In Sections VI and VII, I will further generalize Theorem II. B and extend my discussions to criminal justice, discussing the presumption of innocence in hard cases, and to property law and intellectual property, arguing for a concept of "reipersonae." Through these efforts, I seek to establish Theorem II as a theorem of general application.

In Section VII,I and IX, I shall draw upon Rawl's theory of justice and explore connections with the efficiency theory of common law in my presentation of Theorem I and II. I shall be using a cross-cultural, inter-disciplinary approach.

In Section X, I will re-visit the relationship between Theorem I and Theorem II, and discuss in particular the institutional preconditions for Theorem I to realize. Finally, I will briefly analyze and summarize the potential implications of Hai Rui's Theorems to China's judicial practice and research.

Ⅱ. HAI RUI'S JUDICIAL THEOREMS I AND II

Hai Rui's discourse is concretized. This has been one of the dominant features of traditional Chinese discourse since Confucius. Concretized discourse is vivid, specific and fresh, but with the passage of time, the readers tend to get stuck in the concrete images enumerated by the author and consider the images as they stand, turning theoretical propositions into operation manuals. To counter such tendency, the cultural tradition of China has always repeatedly emphasized that readers or students should learn to "draw inferences about other cases from one instance," "comprehend by analogy," "get the essence and ignore the image (words)," and "study the phenomena of nature and distill