
CHINA LAW UPDATE

CHINA'S RECENT CIVIL LAW CODIFICATION IN THE HIGH-TECH ERA: HISTORY, INNOVATIONS, AND KEY TAKEAWAYS

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I. INTRODUCTION

On May 28, 2020, in its third session, the 13th National People's Congress (hereinafter the "NPC") adopted the Chinese Civil Code (hereinafter the "CCC"). The CCC represents a milestone in the modernization of the Chinese socialist legal system.¹ China uses the continental legal system, where the codification of laws is a key attribute. Though seemingly paradoxical, the CCC is the first codified law in China — except for the Six Codes promulgated by the Kuomintang, for which legal drafters of that era modeled on European legal codes.² The CCC is also the hard-won result of the Chinese Communist Party's (hereinafter the "CPC") political commitment to such codification. During its 19th National Congress, the CPC declared the codification of the CCC an important step in Chinese people's pursuit of a better life, as well as in the promotion of socialism with Chinese characteristics for a new era.³

While civil codes like the French Civil Code of 1804, the German Civil Code of 1896, and the Japanese Civil Code of 1898, have all left a brilliant mark in history, China's new Civil Code, as the world's youngest, benefits from its late-mover advantage. That is to say, by making multiple innovations in accommodation to the 21st-century technologies, the CCC reflects the *high-tech era*. This note aims to present the CCC as pioneering a new generation of civil codes in a high-tech era. It is organized under three sections: The first section revisits the history of the codification of civil law in China, addressing its genesis and development. The second section focuses on the innovations introduced in the CCC in response to the high-tech era. The third section concludes the note with potential lessons to be learned from China's civil law codification, which constitute key takeaways for jurisdictions either in the process of adopting a new civil code, or revising it.

¹ Professor Huo Zhengxin called the adoption of the Civil Code "a milestone for both the protection of human rights and the promotion of rule of law in China." See Huo Zhengxin, *China Enters an Era with a Civil Code*, CHINA JUSTICE OBSERVER (May 29, 2020), <https://www.chinajusticeobserver.com/a/china-enters-an-era-with-a-civil-code>.

² Percy R. Luney Jr., *Traditions and Foreign Influences: Systems of Law in China and Japan*, 52 L. & CONTEMP. PROBS. 129, 131 (1989).

³ Wang Liming, *The Modernization of Chinese Civil Law over Four Decades*, 14 FRONTIERS OF L. IN CHINA 39, 69 (2019), <http://journal.hep.com.cn/flc/EN/10.3868/s050-008-019-0003-4> (last visited Jan. 8, 2021).

II. THE DEVELOPMENT AND CODIFICATION OF THE CHINESE CIVIL LAW

China has a long history of legal developments. Four historical episodes define the codification of China's civil law: the pre-1949 period, when Chinese law evolved from traditional law to codified civil law; the period from 1949 to 1978, when changes in the civil law reflected China's early struggles in finding the right path of development; the period from 1978 to 2014, as China underwent four decades of modernization; and the post-2014 era, which has witnessed the realization of a fully codified civil law.

A. *Pre-1949: the Confucian Tradition and the Adoption of Modern Civil Law*

The founding of the People's Republic of China in 1949 represents a critical juncture in China's legal history. Here we will briefly review the development of civil law in China in the pre-1949 period. Before China became a republic in 1912, its civil law reflected unique historical traditions of Confucianism,⁴ whose main tenets with respect to legal philosophy include social harmony and social order, conciliation and compromise as major dispute resolving mechanisms, emphasis on morality instead of law, and no independent judiciary in the state apparatus.⁵ However, China's Confucian legal traditions did not exclude codification. In fact, China had codified legal rules and principles since at least the Tang Dynasty and the reformation period of the Qing Dynasty.⁶

The foundation of the 1912 nationalist constitutional republic swept away many of the Confucian legal traditions. Between 1929 and 1931, China adopted a civil law system composed of the Kuomintang's Six Codes. These codes, modeled on European examples, consisted of the Organic Law on the Courts, the Commercial Law, the Civil Code, the Criminal Code, the Civil Procedural Code, and the Criminal Procedural Code.⁷ The adoption of the Six Codes moved the Chinese legal system away from a single code focused on criminal law, to one focused on establishing individual codes for the realization of particular legal or social functions.⁸ In addition, the lawmakers combined the general rules of civil and commercial law into a unified code, supplemented

⁴ Such Confucian traditions continued for 2,000 years, until the establishment of the Republic of China in 1912. For the influence of Confucianism on the Chinese legal system, and the Chinese conception of law, see Weng Li, *Philosophical Influences on Contemporary Chinese Law*, 6 INDIANA INT'L & COMP. L. REV. 327 (1996). See also Luke T. Lee & Whalen W. Lai, *The Chinese Conceptions of Law: Confucian, Legalist, and Buddhist*, 29 HASTINGS L. J. 1307 (1978).

⁵ See Luney, *supra* note 2, at 130.

⁶ Zhang Xianchu, *The New Round of Civil Law Codification in China*, 1 UNIV. OF BOLOGNA L. REV. 106, 110 (2016).

⁷ The 1929 Civil Code substituted for customary law. See Zhang Lihong, *The Latest Developments in the Codification of the Chinese Civil Law*, 83 TULANE L. REV. 999, 1000 (2009).

⁸ Zhang Mo, *The Socialist Legal System with Chinese Characteristics: China's Discourse for the Role of Law and a Bitter Experience*, 24 TEMPLE INT'L & COMP. L.J. 1, 32 (2010).

with subordinate laws (such as company law, commercial paper law, insurance law, and bankruptcy law) for the regulation of specific fields.⁹

B. 1949–1978: from China’s Founding to Its Reform and Opening up

The founding of the People’s Republic of China in 1949 marked the Communists’ official ascendance to power. They established socialist government and implemented a communist political philosophy. The development of China’s legal system stumbled during the first decade of the Peoples’ Republic. As soon as the communists came into power in 1949, the government repealed the Six Codes and abolished the existing legal and judicial system, in an effort to remove the capitalist influences and establish a new socialist legal system.¹⁰ The 1952–1953 judicial reform followed the abolition of the Six Codes. This reform sought to expunge “Western” legal concepts, such as the separation of law from politics, the equality of persons before the law, judicial independence, and others. The CPC also removed from office judicial personnel labeled as counter-revolutionaries.¹¹ During the reform period of 1949 to 1953, though hundreds of laws and regulations governing a wide range of political, economic, and social activities were enacted, there was no attempt to enact codes including the civil code.¹² Therefore, in the history of “four rounds of civil law codification”¹³ in China, only two drafts of civil law were completed before the reform and opening up in 1978 — drafted respectively in 1956 and 1964, they were both modeled after the former Soviet Union Civil Code of 1922.¹⁴ The 1956 first-round draft of the civil law resulted from a broader push to establish a more formal Chinese legal system, which also led to the adoption of the first Constitution in 1954. The 1964 second-round draft was the result of both the 1957 break between China and the Soviet Union and a commitment towards modernizing the legal system under the leadership of Chairman Mao Zedong.¹⁵ This journey of legislation halted in 1966 with the Cultural Revolution, which practically paralyzed the socialist legal system. No laws were enacted for about a decade, until the reform and opening up policy came about in 1978.¹⁶

⁹ See Zhang, *supra* note 6, at 110–11.

¹⁰ See Zhang, *supra* note 8, at 32.

¹¹ See Luney, *supra* note 2, at 132.

¹² *Id.*

¹³ According to Zhang’s historical analysis, “the four rounds of failed attempt[s] [at] civil law codification” since the establishment of the Peoples’ Republic of China in 1949 can be described as follows: The first round, in 1950s, aimed to develop a preliminary draft of a civil code. The second attempt in the 1960s and the third attempt in the late 1970s saw two drafts. The fourth round of codification attempt ended in the promulgation of the General Principles of Civil Law in 1986. See Zhang, *supra* note 6, at 111.

¹⁴ *Id.*

¹⁵ See Luney, *supra* note 2, at 133.

¹⁶ See Zhang, *supra* note 8, at 32–33.

C. 1978–2014: Four Decades of Reform and Opening up and Civil Law Modernization

China's reform and opening up in 1978 is a critical springboard for its overall development in the last four decades. The main tenet of the reform and opening up is the development of a market-oriented economy with socialist Chinese characteristics. In addition to the unprecedented and uninterrupted economic growth, the reform and opening up in 1978 has also brought about other achievements, including legal reform centered around good governance by rule of law.¹⁷ From 1978 to 2014, the development of Chinese civil law mainly exhibits two characteristics: legal transplantation from developed countries (mainly those of the continental legal system), and improvement through experimentation (or learning by doing).¹⁸

Though the early efforts at developing “a full and strict civil code” were largely unsuccessful, they nevertheless resulted in the 1986 General Principles of the Civil Law (hereinafter the “GPCL”). The enactment of the GPCL on April 12, 1986, was an important milestone in the reconstruction of Chinese civil law after the Cultural Revolution.¹⁹

There are different views as to the status of the GPCL — whether it is a civil code, an ordinary legislation, or “a quasi-civil code”.²⁰ For instance, Percy R. Luney argued that the GPCL is a civil code with 156 articles, governing property rights, personal rights, intellectual property rights, marital rights, civil rights, legal responsibilities, tort liabilities, and legal remedies.²¹ On the other hand, Zhang Xianchu, though ambiguous as to whether the GPCL is a civil code or not, acknowledged its significance as China's third attempt at codifying the civil law (after the earlier rounds of 1956 and 1964). For Zhang Xianchu, the GPCL lays the very foundation for the systematic development of civil and commercial law in China.²² Concurring with Zhang Xianchu, Zhang Lihong considered the GPCL as China's only fundamental civil act and the origin of China's civil legislation. For him, the GPCL serves as the supreme civil law statute and constitutes the interpretative framework for China's entire civil law.²³ Xu Haiyan argued that the GPCL is neither a comprehensive civil code, nor a piece of legislation focusing on a particular civil law. The GPCL, in her view, fails to only include “well-developed provisions”, and is thus merely a

¹⁷ See DONALD CLARKE et al., THE ROLE OF LAW IN CHINA'S ECONOMIC DEVELOPMENT 377 (Thomas Rawski & Loren Brandt eds., 2008).

¹⁸ See Wang, *supra* note 3, at 40–41.

¹⁹ See Introduction, in TOWARDS A CHINESE CIVIL CODE: COMPARATIVE AND HISTORICAL PERSPECTIVES 4 (Chen Lei & C.H. Remco van Rhee eds., 2012).

²⁰ A “quasi-civil-code” can be conceived as a halfway point towards the complete codification of the civil law, which, albeit effective in governing civil relations, lacks the systematic structure of a full-fledged civil code.

²¹ Luney, *supra* note 2, at 138.

²² Zhang, *supra* note 8, at 111.

²³ Zhang, *supra* note 7, at 1002.

quasi-civil code.²⁴ According to Chen Lei and C.H. van Rhee, the GPCL, though a master statute of civil law, does not serve as a fully-fledged civil code — even though it contains legal principles, such as the protection of private property, the freedom of contract, and the protection of human dignity and personal rights.²⁵ Overall, the GPCL does seem far more like a *quasi-civil code*, rather than a civil code or an ordinary legislation. A civil code is commonly made up of a general part followed by several specific parts, where the general principles of the civil code serve as a common denominator for the interpretation of specific provisions (see for example the French Civil Code of 1804). The GPCL, however, only includes a number of specific statutes governing transactions of property and personal relations, meanwhile lacking important civil law departments such as contract law, property law, tort law, marriage law, succession law, adoption law, and still others. Hence, in comparison with a civil code, the GPCL not only lacks a “general-specific” structure, but is also incomplete with regard to the range of regulation. Therefore, it is sound to argue that the GPCL is a “*quasi-civil-code*”.

Following the adoption of the GPCL, a bundle of laws were ratified, such as the marriage law²⁶, the tort law²⁷, the contract law²⁸, the property law²⁹, and other major civil laws. By and large, the four decades of Chinese civil law modernization yielded mixed results: On the one hand, it contributed to the development of the socialist market economy by granting citizens increasing freedom to conduct economic exchanges, meanwhile extensively safeguarding their civil rights;³⁰ on the other hand, the Chinese civil law was still fragmentary, awaiting the comprehensive civil code to come.

D. Post-2014: Chinese Civil Law’s Modernization, Political Commitment and Codification

The CPC furthered the goal of codifying the Chinese civil law in 2014, when the Fourth Plenary Session of the 18th Central Committee decided on promoting the rule of law by “reinforcing legislation in key areas” and “strengthening the establishment of market legal systems and the codification

²⁴ Xu Haiyan, *Characteristics and Innovations of Chinese Civil Code* (Lecture, China-Africa Legal Professionals Exchange Program, China Law Society, China, Beijing, August 25, 2020), <https://www.oam.org.mz/wp-content/uploads/2020/08/china-africa-legal-professionals-exchange-program.pdf> (last visited Jan. 8, 2021).

²⁵ *Introduction*, *supra* note 19, at 4.

²⁶ Hunyin Fa (婚姻法) [Marriage Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Sept. 10, 1980, amended and effective Apr. 28, 2001) (Chinalawinfo).

²⁷ Qinquan Zeren Fa (侵权责任法) [Tort Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Dec. 26, 2009, effective July 1, 2010) (Chinalawinfo).

²⁸ Hetong Fa (合同法) [Contract Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Mar. 15, 1999, effective Oct. 1, 1999) (Chinalawinfo).

²⁹ Wuquan Fa (物权法) [Property Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Mar. 16, 2007, effective Oct. 1, 2007) (Chinalawinfo).

³⁰ Wang, *supra* note 3, at 41.

of civil law.”³¹ In response, the Standing Committee of the National People’s Congress (hereinafter the “NPCSC”) included civil law codification in its amended five-year legislative plan of 2013–2018. The legislative plan proposed a three-step process regarding the civil law codification: First, formulate the General Provisions and submit it to the NPC for review and approval; second, formulate the subsequent sections under the guidance of the General Provisions, combine them with the approved General Provisions into a Draft Civil Code, and submit the Draft for review to the NPCSC; third, make final adjustments to the Draft and submit the edited Draft for review and approval to the NPC.

In the first stage of codification, the General Provisions was adopted on March 15, 2017, at the Fifth Session of the 12th NPC. In the second stage, the Draft consisting of the General Provisions and the six sections on property, contract, personality rights, marriage and family, succession, and torts was approved by the NPCSC (running from December 23 to 28, 2019), in preparation for ratification by the NPC the following May. The third and final stage consisted of making several modifications to the Draft and submitting the edited Draft for review and ratification. The modifications included adding several provisions regarding epidemic prevention and control, as well as substantially revising a number of controversial provisions. China’s 13th NPC adopted the CCC at its third session on May 28, 2020.

The CCC will come into force on January 1, 2021. It has seven books, including 84 chapters and 1,260 articles ranging over the general provisions, property, contracts, personality rights, marriage and family, succession, and torts. It serves as the country’s first legal code of the 21st century, as well as the most extensive legislation adopted in China’s modern history. Huo Zhengxin describes civil codes in general, and the CCC in particular, as “an encyclopedia of social life”, “a civil constitution of modern society”, and “the basic law of [a] market economy”.³²

III. THE CCC AS THE PRODUCT OF THE HIGH-TECH ERA: CHARACTERISTICS AND INNOVATIONS

A. *Three Generations of Civil Codes: the CCC Reflecting the High-tech Era*

In light of a UNESCO-sponsored survey conducted four decades ago, out of a total of 110 legal sources, about 73 states (67%) had legal sources called

³¹ *Id.* at 45. For more on the crucial role played by politicians in the adoption of laws, such as the codification of the civil code in the context of this article, see Dirk Heirbaut, *Factors Ensuring the Success or Failure of Draft Codifications: Some European Experiences*, in *TOWARDS A CHINESE CIVIL CODE: COMPARATIVE AND HISTORICAL PERSPECTIVES* 61–83 (Chen Lei & C.H. Remco van Rhee eds., 2012).

³² Huo, *supra* note 1, at 2–3.

“codes”.³³ These civil codes have undergone various generations of development. Gunther A. Weiss’ detailed legal history analysis identifies at least three generations (waves) of codifications up to the 21st century.³⁴ The first comprehensive codes were the Scandinavian Code (*Danske Lov*) enacted in 1683, and the Bavarian Civil Code (*Codex Maximilianeus Bavaricus Civilis*) of 1756.³⁵ The second wave comprises the three great natural-law codifications of the Prussian Code (*Allgemeine Landrecht*) of 1794, the French Code (*Code civil des Français*) of 1804, and the Austrian Code (*Allgemeine Bürgerliche Gesetzbuch*) of 1811.³⁶ The third wave of codifications could be seen as initiated by the German *Bürgerliche Gesetzbuch* of 1900 and the Swiss *Zivilgesetzbuch* of 1907, followed by a multitude of codes appearing throughout the continent of Europe and all over the world, including the New Dutch Civil Code of 1992, the Quebec Civil Code of 1997, and the Russian Civil Code of 1999.³⁷

Following the French Civil Code of 1804 by a bit more than 215 years, the CCC can be seen as pioneering the fourth generation of civil codes in the 21st century. It tries to respond to the legal challenges imposed by the ever-growing technology, with a focus on the Internet, big data, information, and knowledge economy.³⁸ Thus, the CCC deserves to be seen as a mirror of the times, leading a new generation of civil codes with distinctive characteristics reflecting a high-tech era. How the CCC interacts with the high-tech era through particular provisions will be discussed in the next sub-sections.

B. The Chinese Civil Code: Codification, Characteristics and Innovations

1. Codifications. The Chinese Civil Code is finally codified into seven books, 84 chapters, and 1,260 articles.

Book I “General Provisions” (Articles 1–204) defines natural persons, legal persons, unincorporated organizations, as well as civil rights, juridical acts, agency, civil liability, extinctive prescriptions, and the calculation of periods.

Book II “Real Rights” (Articles 205–462) covers the creation, modification, transfer and extinction of real rights, the protection of real rights, state ownership, collective ownership and private ownership, an owner’s separate ownership in a building, neighboring relations, and co-ownership. The book also provides special provisions related to the grant of ownership, conventional usufruct on rural land for agricultural operations, the right to use the land for

³³ CSABA VARGA, CODIFICATION AS A SOCIO-HISTORICAL PHENOMENON 18 (Sellers M. et al. eds., 2d ed. 2011).

³⁴ Gunther A. Weiss, *The Enchantment of Codification in the Common-Law World*, 25 YALE J. INT’L L. 435, 453 (2000).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 453–54.

³⁸ Wang, *supra* note 3, at 66.

construction, the right to use rural land for establishing residential lots, and the right of habitation, servitudes, mortgages, pledges, liens, and possession.

Book III “Contracts” (Articles 463–988) covers contracting, the validity of contracts, the performance of contracts, the preservation of contracts, modification and assignment of contracts, the termination of contractual rights and obligations, liability for breaches of contract, sales contracts, and contracts for the supply of power, water, gas and/or heat. The book also covers gift contracts, contracts for the loan of money, contracts of suretyship, leasing contracts, financial leasing contracts, factoring contracts, contracts for work, contracts for construction projects, transportation contracts, technology contracts, deposit contracts, warehousing contracts, contracts of a mandate, property management service contracts, commission agent contracts, intermediary contracts, contracts of partnership, powers of attorney, and unjust enrichment.

Book IV “Personality Rights” (Articles 989–1039) covers the right to life, the inviolability and integrity of the person, the right to health, the right to one’s name, the right to one’s likeness, reputational rights, the right to honor, privacy, and the protection of personal information.

Book V “Marriage and Family” (Articles 1040–1118) covers marriage, family relations, divorce, and adoption.

Book VI “Succession” (Articles 1119–1163) covers statutory succession, testamentary succession and legacy, and the disposition of the estate.

Book VII “Tort Liability” (Articles 1164–1260) covers damages, special provisions on tortfeasors, product liability, liability for motor vehicle-related accidents, medical malpractice, environmental pollution and ecological damage, liability for ultra-hazardous activity, liability for harm caused by domestic animals, and liability for harm caused by buildings or objects.

2. Characteristics of the CCC. The newly adopted CCC comprised of four general characteristics, namely: embodying a person-oriented spirit, promoting the core socialist ideological values, reflecting current times, and focusing on solving China’s practical problems.³⁹ What does each characteristic refer to?

The CCC’s person-oriented spirit essentially refers to a shift of focus from wealth to humanity. Underpinning such a refocus is the protection of civil rights and human dignity — with the right to life extended to unborn embryos and fetuses.⁴⁰ This extension can potentially restrict medical research on human genes which might disrupt the natural evolution. Thus, the focus on the protection of human dignity makes the CCC a truly 21st-century piece of legislation.⁴¹

³⁹ Xu, *supra* note 24, at 4–14.

⁴⁰ *Id.* at 4.

⁴¹ Wang, *supra* note 3, at 66.

The second characteristic of the CCC is its promotion of the core socialist ideological values. The CCC is in line with Xi Jinping's thought on socialism for a new era. It manifests and promotes the core socialist values of equality, fairness, freedom, good faith, abidance by public order, and good morals,⁴² with a focus on extracting the essence of fine traditional culture and implementing the principles of benevolence, populism, integrity, and justice.⁴³

More importantly, the CCC keeps up with current times, *i.e.*, our post-industrial society buffeted by waves of technological innovation. For example, how are we to deal with "doxing", *i.e.*, an act of illegal intrusion of an individual's online accounts? The CCC responds to this problem, as well as others brought about by the explosion of sciences and technologies.⁴⁴ It especially focuses on the regulation of the Internet, big data, and artificial intelligence. For instance, the CCC defines and protects the right to privacy and prevents high-tech inventions from misuse or abuse that would pose a real threat to personal privacy.⁴⁵ It governs high-tech applications through the standardization of human genetic and embryo research, the prohibitions on the use of information technology to produce "deep fake" representations of persons, the recognition of one's own voice as a new type of civil right, as well as the strengthening of the protections for privacy and biometric information.⁴⁶ The spirit of CCC thus enables us to think about it as pioneering a generation of high-tech era civil codes.

Finally, the CCC focuses on solving China's practical problems. Namely, it solves practical problems rather than blindly follows incompatible and irrelevant foreign examples. For Wang Liming, this problem solving aspect of the CCC has three aims: to ensure civil law reflects China's national conditions, to summarize the wisdom gleaned about civil relations over China's long history, and to solve practical problems in the modern era.⁴⁷ Xu Haiyan, on the other hand, focuses on the CCC's role in safeguarding China's socialist economic system. He describes the CCC as promoting the integration of public ownership with the market economy, effectively coordinating the relationship between reform and legislation, and responding to the new conditions, problems and needs emerging from the development of China's socialist market economy.⁴⁸

C. *The CCC's Innovations: Legal Provisions as Evidence*

1. The CCC and the Green Principle. What is the Green Principle, and how is it innovative? The concept of the Green Principle is connected with

⁴² Xu, *supra* note 24, at 5.

⁴³ Wang, *supra* note 3, at 65.

⁴⁴ Xu, *supra* note 24, at 5.

⁴⁵ Wang, *supra* note 3, at 66.

⁴⁶ Xu, *supra* note 24, at 6–7.

⁴⁷ Wang, *supra* note 3, at 71.

⁴⁸ Xu, *supra* note 24, at 12–13.

“green economy” and “green growth”. A “green economy” can be thought of as “low carbon”, “resource efficient”, and “socially inclusive”.⁴⁹ The CCC’s conception of Green Principle can be seen in the same light. China is the first country in the globe that stipulates the Green Principle in its civil code, with the intent that this principle can be applied to the entire civil law, directly affecting the design of the divisions and rules thereof.⁵⁰ The legislative drive can be attributed to the CPC’s advocacy of green development since 2012; in addition, President Xi re-emphasized “speeding up reform of ecological civilization and building a beautiful China” during the 19th NPC in October 2017.⁵¹ Therefore, the rationale behind the Green Principle is mainly to facilitate the protection of public health and welfare from environmental harm, as well as provide a valuable supplement to environmental law enforcement in China.⁵² The codification of the Green Principle can be traced back to the proposed draft submitted by Xu Guodong. Named *A Green Civil Code*, his draft stressed the harmony between mankind and nature, and may have influenced the final code to a large extent.⁵³

The Green Principle features prominently in the CCC’s general provisions, property law, contract law, and tort law. Article 9 of the CCC provides, “[t]he parties to civil legal relations shall conduct civil activities contributing to the conservation of resources and protection of the environment.” This basic provision is reflected under the property law as:

“The right holder of an immovable shall not, in violations of the provisions issued by the state, discard solid waste, discharge air, water, or soil pollutants, make noise, produce optical or electromagnetic radiation, or discharge other hazardous substances.”⁵⁴

In a similar vein, the CCC further proclaims the Green Principle under the property law as:

“The right to use the land for construction shall be created in compliance with the requirements for the conservation of resources and protection of the ecological environment, and the provisions of laws and administrative

⁴⁹ Olivia Bina, *The Green Economy, and Sustainable Development: An Uneasy Balance?* 31 ENVIRONMENTAL PLANNING C: GOVERNMENT AND POLICY 1023, 1024 (2013), <https://journals.sagepub.com/doi/pdf/10.1068/c1310j>. The United Nations Environmental Programme-Green Economy Initiative (UNEP-GEI), for instance, defines “green economy” as “one that results in improved human well-being and social equity, while significantly reducing environmental risks and ecological scarcities.”

⁵⁰ Zhai Tiantian & Chang Yen-Chiang, *The Contribution of China’s Civil Law to Sustainable Development: Progress and Prospects*, 11 SUSTAINABILITY 1 (2019).

⁵¹ *Id.*

⁵² *Id.* at 6.

⁵³ Ge Jiangqiu & Luo Liuhu, *Chinese Civil Code: Background, History and Current Situation*, MAASTRICHT UNIVERSITY BLOG (Nov. 2, 2014), <https://www.maastrichtuniversity.nl/blog/2014/11/chinese-civil-code-background-history-and-current-situationchinese-civil-code> (last visited Jan. 8, 2021).

⁵⁴ Minfa Dian (民法典) [The Civil Code] (promulgated by the Nat’l People’s Cong., May 28, 2020, effective Jan. 1, 2021), art. 294 (Chinalawinfo).

regulations on land use, and shall not damage the usufruct that has already been created.⁵⁵

The contract law also reflects the Green Principle by stipulating “[in] performing a contract, the parties shall avoid wasting resources, polluting the environment, and compromising ecology.”⁵⁶ Further, the tort law proclaims, “[where] any harm is caused to another person by environmental pollution or ecological damage, the tortfeasor shall assume the tort liability.”⁵⁷ Therefore, the Green Principle is adopted throughout the CCC, rendering it a true pioneer in environmental protection.

2. **Personality Attributed to Fetuses: the Extension of Legal Protection.** The attribution of civil rights to the unborn child, and thus its legal protection, is a heated legal issue which bears relevance to how the concept of natural person is to be construed.⁵⁸ The CCC responds to this issue by extending legal protection to fetuses, as stipulated in Article 16:

“Where the protection of the interests of a fetus is involved in, among others, succession or acceptance of a gift, the fetus shall be presumed to have the capacity for civil rights. However, in case of a stillborn, the fetus’s capacity for civil rights has never existed.”

Therefore, it can be argued that the CCC recognizes the human dignity of a fetus, when the legal interest of the unborn child so demands. It should be noted, however, that the question remains as to how the viability of a child should be decided, *i.e.*, what constitutes a “stillborn”. The legislation, though innovative and commendable, fails to address this issue.

3. **The CCC’s Great Leap Forward in Keeping with New Sciences and Technologies.** A number of arguments support our assertion that the CCC pioneers a generation of high-tech era civil codes. To start with, it restricts human genetic and embryonic research. Such a restriction seeks to protect civil rights and human dignity by stipulating: “Medical and scientific research activities concerning human genes and human embryos, among others, shall be carried out according to the laws and administrative regulations, and relevant provisions issued by the state, without endangering human health, violating moral principles, or damaging public interests.”⁵⁹ The CCC’s prohibition on the use of information technology to falsely portrait others serves as another argument for our assertion. It stipulates that “[no] organization or individual may infringe upon any other’s rights of likeness by defaming, defacing, or

⁵⁵ *Id.* art. 346.

⁵⁶ *Id.* art. 509.

⁵⁷ *Id.* art. 1229.

⁵⁸ See Lisette ten Haaf, *Unborn and Future Children as New Legal Subjects: An Evaluation of Two Subject-Oriented Approaches — The Subject of Rights and the Subject of Interests*, 18 GERMAN L.J. 1091, 1092 (2017).

⁵⁹ The Civil Code, art. 1009.

forgery by information technology, and other means.”⁶⁰ Another of the CCC’s innovations is its recognition of the right to one’s voice as a new civil right. Human voice can be recognized as a personal right because the unique vibration of human vocal cords indicates one’s identity. While recognizing individual voices can be fairly difficult in real life, modern technology is capable of minimizing such difficulty, thus strengthening the relationship between voice and personal identity.⁶¹ In response to that, Article 1023 of the CCC proclaims, “[the] protection of a natural person’s voice shall be governed [by] the relevant provisions on the protection of the right of likeness”.⁶²

Provisions strengthening the protection of privacy and biometric information further reflect the CCC’s leap forward concomitant with the development of science and technology. Concerning the protection of privacy, the CCC stipulates that, “[a] natural person enjoys the right to privacy. No organization or individual may infringe upon any other’s right of privacy by spying, intrusion, disclosure, publishing, or any other means. Privacy is the tranquility of the private life of a natural person, and the private space, private activities, and private information that he is unwilling to be known to others.”⁶³ Article 1033 prohibits certain actions in violation of privacy. The full version of the provision provides as follows:

Except as otherwise prescribed by law or with the express consent of the right holder, no organization or individual may conduct the following acts:

Invading the tranquility of the private life of any other person by phone calls, SMS, instant messaging tools, emails, leaflets, or any other means.

Entering, photographing, or peeping at any other person’s residence, hotel room, or any other private space.

Photographing, peeping at, eavesdropping on, or publishing the private activities of any other person.

Photographing or peeping at any private part of any other person’s body.

Handling the private information of any other person.

Infringing upon the right of privacy of any other person by other means.

Therefore, illegal tracking and other high-tech methods that violate personal privacy are prohibited by the CCC. In addition to personal information rights, the CCC extends protection to biometric information. As noted by Xu Haiyan, personal biometric information refers to a natural person’s facial features, fingerprints, iris, genes, gait, handwriting, and other information that can identify the physical and behavioral characteristics of that natural person.⁶⁴ Article 1034, the legal basis for the protection of personal information of natural persons that includes biological recognition information, dictates as follows:

⁶⁰ *Id.* art. 1019.

⁶¹ Xu, *supra* note 24, at 6–7.

⁶² The Civil Code, art. 1023.

⁶³ *Id.* art. 1032.

⁶⁴ Xu, *supra* note 24, at 7.

“The personal information of natural persons is protected by law. Personal information is various information recorded electronically or in other forms than can identify a specific natural person separately or in combination with other information, including a natural person’s name, date of birth, identity card number, biological recognition information, address, telephone number, e-mail address, health information, and whereabouts information, among others. Private information in personal information shall be governed by the provisions on privacy right; where there are no such provisions, the provisions on the protection of personal information shall apply.”

4. The CCC and E-Commerce. The CCC’s response to economic globalization illustrates its innovative nature and pragmatic approach to lawmaking. China’s market economy with Chinese characteristics has reformed and opened up in response to the economic globalization. Hence the CCC has had to keep up with legal internationalization concomitant with economic globalization.⁶⁵ A major example thereof is its active response to the development of e-commerce in contract transactions. The following provisions for contracting through the Internet can be mentioned as evidence.

The CCC makes provision for contractually-binding offers and their acceptance online. Specifically, “unless the parties agree otherwise, [if] the information on goods or services provided by one party on an information network, such as the Internet, meets the conditions for an offer, a contract is formed when the other party selects the goods or services, and successfully submits the order.”⁶⁶ Regarding the delivery of the goods contracted via the Internet, “where the subject matter of an electronic contract entered into through an information network, such as the Internet, is to deliver goods, and the delivery is made [using] express shipping service, the time of delivery shall be the time when the consignee acknowledges receipt. If the subject matter of an electronic contract is to provide services, the time of providing services shall be the time specified in the generated electronic document or paper document. If the subject matter of an electronic contract is delivered online, the time of delivery shall be the time when the subject matter of the contract enters the specific system designated by the other party and becomes susceptible to search and identification.”⁶⁷

In general, the CCC of the 21st century is a milestone in the development of China’s civil law, and introduces multiple innovations. It pioneers the new generation of civil law codes of our high-tech era. Countries with civil codes from prior generations can learn several things from China’s new code, as will be expounded in the next section.

⁶⁵ *Id.* at 9.

⁶⁶ The Civil Code, art. 491.

⁶⁷ *Id.* art. 512.

IV. KEY TAKEAWAYS FROM THE EXPERIENCE OF CIVIL LAW CODIFICATION

Legal codification represents an arduous process with ups and downs. The codification of Chinese civil law is no exception — it lasted for hundreds of years. Fortunately, this process has yielded a remarkable result: The CCC, as its ultimate product, represents a successful transformation of a country's legal system in response to changes in economy and technology. A good deal can be learned from China's experience of civil law codification. In legal codification, especially when transplanting legal instruments from other jurisdictions, it is important to keep in mind the particular time setting and the problems to be solved. The CCC aims to confront the challenge of integrating public ownership with the market economy, in order to safeguard China's socialist market economy system.⁶⁸ Moreover, it is rooted in the modern conditions and problems surrounding the development of a nation which seeks to prosper by taking full advantage of science and technology.⁶⁹ These considerations have to a large extent shaped the CCC and boosted its innovations. In light of the Chinese experience, other countries' codification attempts may begin by taking stock of their own practical problems, especially those engendered by civil life in the high-tech era. By focusing on contemporary problems, future civil law codifications can truly form the fourth wave — a generation of modern civil law codifications in a high-tech era.

⁶⁸ Xu, *supra* note 24, at 12.

⁶⁹ *Id.* at 13.