

# Class Nature in Contemporary Chinese Socialist Law – Its Derivation, Evolution, and Status Quo

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## Abstract

*To study and understand Chinese socialist law, class nature is destined as a key point which cannot be avoided. Inherited from classical Marxism-Leninism and practiced in the CCP's own revolutionary movements, the class theory of state and law exerts great influence on the Chinese legal system. Generally corresponding to the history of the PRC, with the year 1978 as its watershed, the class understanding of law varies also in the two phases of Chinese socialist law. This article aims to trace the theoretical trajectory of the class theory of state and law in China and to analyze its functions in both the construction of Chinese socialist legality and the drafting of concrete legislation. Further, it endeavors to investigate, in light of the political "rectification to restore order" and the economic market-oriented reforms adopted since 1978, whether and in what form class nature still exists in current Chinese socialist law under the Chinese "socialist rule of law state".*

## I. Introduction

As is well-known, the People's Republic of China (PRC) defines itself as a socialist state, and corresponding to the classical Marxist-Leninist theory of state and law, its law is also (and must be) of a socialist nature. In defining the socialist nature of law, one of the core components is its class nature. Historically seen, over the course of a long history after the founding of the PRC in 1949, the class nature of law constituted the guiding ideology for understanding, formulating, and enforcing law in China before the Reform and Opening policy in 1978. To some extent, it seems inappropriate to once again concentrate on the class nature of Chinese law – after the forty plus years of Reform and Opening ongoing since 1978 – as it is generally assumed that the class nature of law, which had been elevated to the core nature of Chinese socialist legality, had been eliminated with the political "rectification to restore order (拨乱反正)" and the economic market-oriented reforms following the Cultural Revolution (1966–1976).

Still, the PRC, notwithstanding the tapering off of class-nature narratives, remains (or at least asserts itself as) a socialist state, and its legality is constitutionally defined as embodying the obligation to "construct a socialist rule of law state (社会主义法治国家)". Thus, the continuing insistence on the socialist nature of the Chinese state and its law renders worthy an inquiry as to whether the withering away of class nature in the official as well as the scholarly narratives since the 1980s has really led to a halt of class nature in Chinese law and

that, consequently, contemporary Chinese socialist law has attained a kind of legality without a continuing prescription of class nature. Or is it the case (and perhaps more likely) that the class nature of Chinese law does indeed continue to exist – albeit in some more intangible and recessive form – and still contributes decisively to the socialist nature of the Chinese state and its law?

This article examines the trajectory of class nature in the Chinese socialist state and its legality since 1949, and, based on such a historical analysis, endeavors to point out which functions class nature still exerts in the current socialist-rule-of-law state. The first part examines the internal relationships between class nature and the socialist nature of the Chinese state and its law, taking into account the classical Marxist-Leninist theory of the state and law as well as its Chinese realization and localization shaped by the revolutionary experiences of the Chinese Communist Party (CCP) and the theorization of the CCP's top leaders. Then, it expounds on the functions of class nature in building the Chinese socialist legal system at the early stages of the PRC (the second part). The third part, which brings concrete PRC legislation into perspective, sheds light on how and in which forms class nature penetrates into positive legal provisions. In the fourth part, the author examines the existence of class nature in the Reform and Opening era and discusses the existence and functions of class nature in the Chinese socialist-rule-of-law state.

## II. Class nature and the socialist nature of Chinese law

Founded and organized as a communist party, the CCP and the socialist PRC under its rule inherit and practice Marxist theories of state and law, amongst which

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the theory relating to the class nature of state and law is decisive. The socialist nature of law, under classical Marxist theory, refers above all to the class nature of law in a proletariat-led state. Over the long term after the founding of the PRC, the top CCP leaders insisted on the enshrined judgments of Marxism-Leninism as regards the class nature of the state and law, and class nature constituted the core content of Chinese socialist law.

### 1. The class nature of the state and law under classical Marxism-Leninism

In its huge and sophisticated theoretical trajectory, one of the most explosive and destructive components of classical Marxist-Leninist theory is its method of class analysis, class identification, and, in its revolutionary form, class struggle. The conception of class plays a core role in constructing the Marxist theory of the state and law. For the interwovenness of the class nature of the state and the nature of the law in a socialist state, Marx and Engels present a clear logic argumentation. Here, in this part, it is appropriate to refer to some of their classical class-based theories on state and law as articulated in their original texts.

By generally asserting that “the history of all hitherto existing society is the history of class struggles (*Klassenkämpfe*)”<sup>2</sup> Friedrich Engels, in defining the nature of the state, points out in his work *Der Ursprung der Familie, des Privateigentums und des Staats* (Origin of the Family, Private Property, and the State) that:

*[The state] is a product of society at a particular stage of development; it is the admission that this society has involved itself in insoluble self-contradiction and is cleft into irreconcilable antagonisms (unversöhnliche Gegensätze) which it is powerless to exorcise. But in order that these antagonisms, classes with conflicting economic interests, shall not consume themselves and society in fruitless struggle, a power, apparently standing above society, has become necessary to moderate the conflict and keep it within the bounds of “order”; and this power, arisen out of society, but placing itself above it and increasingly alienating itself from it, is the state.*<sup>3</sup>

Subsequently, he continues on and illustrates the structure and situation of classes within the state and defines the state as an instrument of the economically and, correspondingly, also politically ruling class for maintaining its rule over the ruled class:

<sup>2</sup> Karl Marx/Friedrich Engels, Manifest der Kommunistischen Partei, in: Karl Marx / Friedrich Engels, Werke, Vol. 4, Dietz Verlag 1977, Berlin, p. 462. For the quoted English translation, see <<https://www.marxists.org/archive/marx/works/1848/communist-manifesto/ch01.htm>>, visited 30 November 2021.

<sup>3</sup> Friedrich Engels, Der Ursprung der Familie, des Privateigentums und des Staats, in: Karl Marx / Friedrich Engels, Werke, Vol. 21, Dietz Verlag 1962, Berlin, p. 165. For the quoted English translation, see <<https://www.marxists.org/archive/marx/works/1884/origin-family/ch09.htm>>, visited 30 November 2021.

*As the state arose from the need to keep class antagonisms (Klassengegensätze) in check, but also arose in the thick of the fight between the classes, it is normally the state of the most powerful, economically ruling class, which by its means becomes also the politically ruling class, and so acquires new means of holding down and exploiting the oppressed class. The ancient state was, above all, the state of the slave-owners for holding down the slaves, just as the feudal state was the organ of the nobility for holding down the peasant serfs and bondsmen, and the modern representative state is the instrument for exploiting wage-labor by capital.*<sup>4</sup>

Against the backdrop of the working-class movements witnessed since the 19th century, Marx and Engels applied their general class theory principally to the analysis of the antagonism between the proletariat and the bourgeois,<sup>5</sup> the two sides being regarded as the fundamental antagonistic classes in modern industrial states. The class antagonism between the proletariat and the bourgeois, discerned by Marx and Engels, provides the initial and sizable power allowing the proletariat to revolutionarily overthrow the state featuring the bourgeois in power and to establish a socialist (or in its advanced form, communist) state. Such a socialist state is a state that politically has the proletariat as the ruling class and economically enshrines state ownership instead of capitalist private property. In *Herrn Eugen Dührings Umwälzung der Wissenschaft (Anti-Dühring)* (Herr Eugen Dührings Revolution in Science (Anti-Dühring)), Friedrich Engels writes:

*Whilst the capitalist mode of production (Produktionsweise) more and more completely transforms the great majority of the population into proletarians, it creates the power which, under penalty of its own destruction, is forced to accomplish this revolution. Whilst it forces on more and more the transformation of the vast means of production (Produktionsmittel), already socialized, into state property, it shows itself the way to accomplishing this revolution. The proletariat seizes political power and turns the means of production in the first instance into state property.*<sup>6</sup>

Based on the definition of the class nature of a socialist state, Marx and Engels argue further for the high homogeneity between state and law in terms of

<sup>4</sup> Friedrich Engels (supra note 3), pp. 166–167.

<sup>5</sup> “By bourgeoisie is meant the class of modern capitalists, owners of the means of social production and employers of wage labor. By proletariat, the class of modern wage laborers who, having no means of production of their own, are reduced to selling their labor power in order to live.” Friedrich Engels, English edition of the Manifesto of the Communist Party, 1888. For the English translation, see <<https://www.marxists.org/archive/marx/works/1848/communist-manifesto/ch01.htm>>, visited 30 November 2021.

<sup>6</sup> Friedrich Engels, Herrn Eugen Dührings Umwälzung der Wissenschaft (Anti-Dühring), in: Karl Marx / Friedrich Engels, Werke, Vol. 20, Dietz Verlag 1975, Berlin, p. 261. For the quoted English translation, see <<https://www.marxists.org/archive/marx/works/1877/anti-duhring/ch24.htm>>, visited 30 November 2021.

class nature. In one of their most important works *Die Deutsche Ideologie* (The German Ideology), a series of highly abstract philosophical reasoning processes leads to the following concise conclusion:

*“Law = Dominant will of the state  
= State will”*<sup>7</sup>

*(Gesetz = Herrscherwille des Staats,  
= Staatswillen)*

and

*“Law, the state’s declaration of will”*<sup>8</sup>  
*(Gesetz, Willenserklärung des Staates)*

According to these equations, when the socialist state represents and realizes the dominant will of the proletariat as ruling class, then the law, as the declaration of the state’s will, reflects also only the will of the proletariat and is, hence, innately of a class nature. And in this sense, class nature constitutes the decisive nature of socialist law. Concerning this judgment, Friedrich Engels writes in *Juristen und Sozialismus* (Lawyer’s Socialism) explicitly:

*What else does Marx tell us but that the views of law (Rechtsanschauungen) held by each of the large social classes conform with their respective class positions (Klassenlage)?*<sup>9</sup>

*This does not mean to say, of course, that the socialists will refrain from making specific legal demands (Rechtsforderungen). An active socialist party is impossible without such demands, like any political party. The demands that derive from the common interests of a class can only be put into effect by this class taking over political power and securing universal validity for its demands by making them law. Every class in struggle must therefore set forth its demands in the form of legal demands in a programme.*<sup>10</sup>

The classical class nature theory of Marxism as regards the state and law was then inherited and developed in the USSR through the concrete revolutionary experiences and practices in constructing the Soviet socialist regime. Leninist theory demonstrates a total loyalty to Marxist theory: For Lenin, the state is a product of the irreconcilability of class antagonisms: “the

state arises where, when and insofar as class antagonism objectively cannot be reconciled. And, conversely, the existence of the state proves that the class antagonisms are irreconcilable.”<sup>11</sup> More directly, he points out also: “The state is an instrument for the exploitation of the oppressed class.”<sup>12</sup> And “the democratic republic” is denounced by him as “the best possible political shell for capitalism”.<sup>13</sup>

The class-based legal theory in the USSR, which exerted great influences on the PRC’s legal system, was further theorized by Andrei Vyshinsky. According to his theorization, the state is defined as “an apparatus of constraint of violence with whose aid the dominant classes ensured the obedience of their ‘subjects’.”<sup>14</sup> And correspondingly, law, in the Soviet state, “is entirely and completely directed against exploitation and exploiters. Soviet law is the law of the socialist state of workers and peasants. It is invoked to meet the problems of the struggle with foes of socialism and the cause of building a socialist society.”<sup>15</sup> What’s more, as one of his important further developments of Marxist theory on the state and law, he points out: “Law is the totality [...] of customs and rules of community life sanctioned by state authority – their application being guaranteed by the compulsive force of the state in order to guard, secure, and develop social relationships and social orders advantageous and agreeable to the dominant class.”<sup>16</sup> Based on the general class-underpinned interpretation of state and law, class nature builds the intrinsic commonality of the socialist state and its law. Unequivocally, Vyshinsky demystifies the decisive role of class nature in defining the socialist nature of the law in the socialist Soviet state:

*Soviet law protects the interests of the toiling masses, who have been emancipated from exploitation and the weight of capitalism. [...] The Soviet state, and Soviet law from the first days of its emergence defend the interests of labor against capital, the interests of popular masses and the overwhelming majority of the people against a handful of exploiters and parasitic elements of the old society. Only in a socialist state of workers and peasants are the interests and rights of man defended at the same time, inasmuch as individual well-being rests on the social wealth the property of the people.*<sup>17</sup>

## 2. The inheritance of Marxist-Leninist class theory and its impact on the PRC’s law

Marxist-Leninist class theory was enshrined as a powerful theoretical weapon by the CCP not only in its

<sup>7</sup> Karl Marx/Friedrich Engels, *Die deutsche Ideologie. Kritik der neuesten deutschen Philosophie in ihren Repräsentanten Feuerbach, B. Bauer und Stirner, und des deutschen Sozialismus in seinen verschiedenen Propheten*, in: Karl Marx / Friedrich Engels, *Werke*, Vol. 3, Dietz Verlag 1978, Berlin, p. 313. For the quoted English translation, see <<https://www.marxists.org/archive/marx/works/1845/german-ideology/ch03j.htm>>, visited 30 November 2021.

<sup>8</sup> Karl Marx/Friedrich Engels (supra note 7), p. 318.

<sup>9</sup> Friedrich Engels, *Juristen-Sozialismus*, in: Karl Marx / Friedrich Engels, *Werke*, Vol. 21, Dietz Verlag 1962, Berlin, p. 495. For the quoted English translation, see <<https://www.marxists.org/archive/marx/works/1886/10/lawyers-socialism.htm>>, visited 30 November 2021.

<sup>10</sup> Friedrich Engels (supra note 9), p. 509.

<sup>11</sup> V. I. Lenin, *The State and Revolution – The Marxist Theory of the State and the Tasks of the Proletariat in the Revolution*, in: Lenin Collected Works, Vol. 25, Progress Publishers Moscow, 1964, p. 392.

<sup>12</sup> V. I. Lenin (supra note 11), p. 396.

<sup>13</sup> V. I. Lenin (supra note 11), p. 398.

<sup>14</sup> Andrei Y. Vyshinsky (ed.), *The Law of the Soviet State*, translated by Hugh W. Babb, the Macmillan Co., 1948, p. 11.

<sup>15</sup> Andrei Y. Vyshinsky (supra note 14), p. 40.

<sup>16</sup> Andrei Y. Vyshinsky (supra note 14), p. 40.

<sup>17</sup> Andrei Y. Vyshinsky (supra note 14), p. 75.

revolutionary period but also in the construction era after the founding of the PRC in 1949. The extremely-simplified division of all society members into two antagonistic camps under class theory provided the CCP with a simple and convenient – but also strong and explosive – theoretical instrument to carry out its revolutionary movements. By generally remaining loyal to the class theory of Marxism-Leninism and selectively learning from the USSR's experiences with a violent socialist revolution, Mao Zedong, as the simultaneous leader and theorizer of the Chinese socialist revolution, developed his class theory as grounded in Chinese revolutionary experiences and realities. More concretely and operationally, he applied class theory in conceiving the Chinese state and law under socialism, and in so doing laid down the theory of the people's democratic dictatorship (人民民主专政) as the definition of the Chinese socialist state nature. Mao Zedong pointed out:

*At the present stage in China, they [people] are the working class, the peasantry, the urban petty bourgeoisie and the national bourgeoisie. These classes, led by the working class and the Communist Party, unite to form their own state and elect their own government; they enforce their dictatorship over the running dogs of imperialism – the landlord class and bureaucrat-bourgeoisie, as well as the representatives of those classes, the Kuomintang reactionaries and their accomplices – suppress them, allow them only to behave themselves and not to be unruly in word or deed. If they speak or act in an unruly way, they will be promptly stopped and punished. Democracy is practiced within the ranks of the people, who enjoy the rights of freedom of speech, assembly, association and so on. The right to vote belongs only to the people, not to the reactionaries. The combination of these two aspects, democracy for the people and dictatorship over the reactionaries, is the people's democratic dictatorship.<sup>18</sup>*

Based on, first, a conformity with the above class-nature definition of the Chinese socialist state and, second, a high homogeneity between state and law in terms of their class nature under Marxist-Leninist class theory, the class-distinguished achievement of “democracy for people and dictatorship over the reactionaries” precipitated also its legal realization, and this class nature constituted the fundamental epistemological framework for Chinese socialist law, as Mao Zedong indicated in one of his few direct narratives on (constitutional) law:

*Our constitution<sup>19</sup> is of a socialist type. It is based mainly on our own experience but has drawn upon what is good in the constitutions of the Soviet Union and the People's Democracies. [...] All the same, present-day bourgeois constitutions are no good at all, they are bad, particularly the constitutions of the imperialist countries, which are designed to deceive and oppress the majority of the people. Our constitution is of a new, socialist type, different from any of the bourgeois type. It is far more progressive than the constitutions of the bourgeoisie even in its revolutionary period. We are superior to the bourgeoisie.<sup>20</sup>*

### III. The functions of class nature in building Chinese socialist legality

Just like its functions in the CCP's revolution, class nature played also a twofold – both destructive and constructive – role in building socialist law in China. As a minimalistic theory for social transformation, class theory, on the one hand, helped the newly founded PRC realize a prompt and complete break with the past legal burden of the Republic of China (中华民国) under the rule of the Kuomintang (KMT, the Chinese Nationalist Party); on the other hand, it provided the CCP with an indispensable, theoretical point of origin for constructing Chinese socialist law.

#### 1. The rupture with the bourgeois legal burden of the Kuomintang

As the opening chapter of the PRC's legal history, reference can be made to the great event whereby the CCP abolished the entire legal system of the KMT in 1949. The “Instruction of the Central Committee of the Communist Party of China on Abolishing the Six Laws of the Kuomintang and Determining the Judicial Principles of the Liberated Areas”,<sup>21</sup> (hereafter, the Instruction of 1949), generally ordered the abrogation of all laws, decrees, and judicial systems of the “Kuomintang reactionary government” which oppress the people and enactment of laws and decrees protecting the people and establishing the people's judicial system.

The “Six Laws (六法全书)” refer to the Constitution, civil law, commercial law, criminal law, civil procedural law, and criminal procedural law as promulgated by the Kuomintang government. Drawing on a history dating to the late Qing-Dynasty and based on the general motive of “saving the nation from subjugation and ensuring its survival (救亡图存)”, the “Six Laws” represented the great achievement of the Western-oriented political and legal modernization undertaken by the KMT during its rule of Mainland China before 1949.

<sup>19</sup> The reference here is to the Chinese Constitution of 1954 as the first Constitution of the PRC.

<sup>20</sup> MAO Zedong (毛泽东), On the Draft Constitution of the People's Republic of China (June 14, 1954) (关于中华人民共和国宪法草案), in: Selected Works of Mao Zedong, Vol. 5, Renmin Chubanshe, 1977, p. 127.

<sup>21</sup> 中共中央关于废除国民党的六法全书与确定解放区的司法原则的指示, issued on February 22, 1949.

<sup>18</sup> MAO Zedong (毛泽东), On the People's Democratic Dictatorship – In Commemoration of the Twenty-eighth Anniversary of the Communist Party of China (June 30, 1949) (论人民民主专政——纪念中国共产党二十八周年), in: Selected Works of Mao Zedong, Vol. 4, Renmin Chubanshe, 1991, p. 1468.

By vigorously studying the legal systems of Western countries, the KMT established, for the first time, a legal system in a real modern sense, one which generally transplanted and absorbed Western legal ideas and values, applied Western legal terminologies and legislative techniques and imitated Western institutions in terms of law enforcement. The “Six Laws”, compared to China’s own ancient legal tradition principally based on Confucianism, achieved to a large extent the modern legal regularity of Chinese society.

With the military defeat of the KMT in Mainland China in 1949, its law as well as the whole state was denounced as “reactionary” and “pseudo” under the method of class analysis adopted by the CCP. Whilst consciously neglecting the professionalism, sophistication, and complexity of the whole legal system existing under the “Six Laws”, class theory delivered a simple and coarse way to break with the bourgeois legal burden of the KMT.<sup>22</sup> In a proficient application of class theory, the Instruction of 1949 asserted that:

*Like the state, law is only an instrument to ensure the interests of [a] certain ruling class. Like the general bourgeois law, the Six Laws of the Kuomintang appear in the form of concealing the essence of class. But in fact, since there is no supra-class state, there can be no supra-class law. [...] All the laws of the Kuomintang can only be a tool to protect the reactionary rule of the landlord and the comprador bureaucratic bourgeoisie, and a weapon to suppress and restrain the broad masses.*<sup>23</sup>

The subsequent, and more essential, measure for practicing class theory in the legal era, as initially demanded by the Instruction of 1949,<sup>24</sup> was the campaign of judicial reform (司法改革运动) in 1952 and 1953,

<sup>22</sup> Under class theory, even some neutral legal terminologies were denounced as having a class nature. “Under the reactionary regime, the legal terminologies used to confuse and rule the people should have been eliminated with the elimination of the reactionary regime of Chiang Kai Shek. [...] Such terms (of civil law) as ‘unsuitability of litigants (当事人不适格)’, ‘object of litigation (诉讼标的)’, ‘Negotiorum gestio (无因管理)’ should not be used again.” So XIE Bangmin (谢邦敏), Suggestions on the Reform of Terms and Forms of Judgments (关于改革判决书用语及格式的意见), in: People’s Daily (June 14, 1952). In the field of criminal law, it was asserted that: “The judicial staff with the old [bourgeois] legal points of view do not distinguish between the enemy and ourselves and regard the enemy as their friend when handling cases. They distort and manipulate terms such as ‘limitation of action has run (诉讼时效已过)’, ‘attempted crime (犯罪未遂)’, ‘young (年轻)’, ‘old (年老)’ etc. to exonerate or alleviate the crimes of the counterrevolutionaries.” The Editorial of the People’s Daily, “Resolutely Overcome the Serious Impurity in Some Judicial Organs and Launch a Nationwide Judicial Reform Campaign on August 17, 1952” (坚决克服部分司法机关中的严重不纯现象 全国将展开司法改革运动).

<sup>23</sup> Point 2 of the Instruction of 1949.

<sup>24</sup> “In order to educate and reform judicial cadres, the judicial organs must learn and master Marxism-Leninism, Mao Zedong Thought of state and law and new democratic policies, programs, laws, orders, regulations and resolutions, and should always be in the spirit of contempt and criticism of the Six Laws and all other reactionary laws and decrees of the Kuomintang, and of contempt and criticism of all anti-people laws and decrees of capitalist countries in Europe, America and Japan.” Point 3 of the Instruction of 1949.

the principal objective of which was to supplant the personnel of “bourgeois encumbrance” with those having firm Marxist-Leninist faith in the judicial organs and ultimately to “purify” the judicial organs. In the “Report on the Thorough Transformation and Reorganization of the People’s Courts at All Levels”<sup>25</sup> of Shi Liang, the then Minister of Justice of the Central People’s Government, it was determined that there still existed a considerable number of elderly judicial personnel in the courts, many of whom were identified as reactionary,<sup>26</sup> and, correspondingly, there was a serious organizational and ideological impurity in these courts. The campaign of judicial reform was thus to maintain and enhance organizational, political, and ideological purity<sup>27</sup> by, *inter alia*, “completely changing the organizational component (组织成分) of the courts at all levels”.<sup>28</sup> Dong Biwu, the then vice premier of the Government Administration Council and director of the Political and Legal Committee, stated: “Obviously, in the past, these [old judicial] personnel served the reactionary ruling class and functioned as a direct tool for the reactionaries to suppress revolutionary movements and oppress and extort the working people. Their thoughts are full of legal conceptions of counterrevolution and anti-people, and they are deeply influenced by the reactionaries politically.”<sup>29</sup> Based on this judgment, he defined the principle for the reorganization of judicial organs: “The old judges and procurators shall not be judges of the people’s courts, and those who have not been completely transformed or strictly examined shall not be allowed to conduct judicial work. The bad members in the judicial staff should be removed from the judicial department.”<sup>30</sup>

Under the guidance of a class road, the campaign of judicial reform was rapidly pressed. In an official re-

<sup>25</sup> 关于彻底改造和整顿各级人民法院的报告, approved by the Government Administration Council of the Central People’s Government on August 13, 1952.

<sup>26</sup> “For example, according to statistics of Wuhan people’s court, Guangzhou people’s court, Guangdong people’s court, Jiangxi people’s court and Guangxi people’s courts at all levels, reactionary parties, groups and secret agents account for 64% of the old judicial personnel. The reactionary parties, groups and secret agents in the old judicial personnel of Taiyuan people’s court account for 83% of the old judicial personnel.”

<sup>27</sup> See also the Editorial of the People’s Daily, “The Judicial Work Must Be Reformed Thoroughly (必须改革司法工作)”, in: People’s Daily on August 17, 1952.

<sup>28</sup> “Instructions of the Central Committee of the Communist Party of China on Several Issues to Be Paid Attention to in the Judicial Reform (中共中央关于进行司法改革工作应注意的几个问题的指示)” of August 30, 1952, in: Selected and Compiled Important Documents since the Founding of the People’s Republic of China, Vol. 3, Central Party Literature Press, 1992, pp. 316–317. One observer of the time stated: “Organizational impurity is the root of all problems in the court work before the judicial reform, and also the basic reason for the growth and spread of the old legal views and the old judicial style.” ZHOU Jihu (周继湖), Refute the Slander of the Bourgeois Rightists on the Judicial Reform Movement (驳斥资产阶级右派对司法改革运动的污蔑), in: Zhongnan zhengfa xueyuan xuebao, No. 2, 1957, p. 36.

<sup>29</sup> DONG Biwu (董必武), Issues on the Reform of Judicial Organs and the Supplement and Training of Political and Legal cadres (关于改革司法机关及政法干部补充、训练诸问题), in: Collection of Dong Biwu’s Legal Literatures, Falü Chubanshe, 2001, p. 121.

<sup>30</sup> DONG Biwu (supra note 29), p. 122.

port in 1952, it was summarized: “By the end of 1952, the reorganization of judicial organs in the judicial reform has been basically completed, and a total of 6,570 persons have been ‘handled’. In some local places, the old judicial personnel have been completely excluded out of the judicial organs, such as in Guangxi of the Central South region. In other local places, the majority of the old judicial personnel have been transferred out of the judicial organs and only few of the old personnel with excellent transformation remain. 6,596 persons have been transferred into the judicial organs, the majority of whom are advanced cadres of the CCP and the Communist Youth League.”<sup>31</sup> A similar campaign to purify legal ideology and impose the class doctrine of Marxism and Leninism occurred also in legal education.<sup>32</sup>

## 2. The shapes of the elementary modalities of Chinese socialist law

By abolishing the legal system of the Kuomintang and reorganizing the judicial organs, class doctrine realized the legal “zero hour” for the socialist PRC. Based on the ideology of Marxism-Leninism as well as Mao Zedong Thought on the state and law, the socialist legal construction of the new PRC was fundamentally required to demonstrate and practice class doctrine. In the context of the 1950s, class doctrine was transformed so as to realize the establishment of a legal (judicial) system of the people (人民), with the latter term being a notion which was tantamount to the proletariat (workers and peasants) in the sense of class antagonism. The people’s legal (judicial) system that was shaped by class underpinnings, as the official statements<sup>33</sup> indicate, manifests a totally different legal image than its bourgeois counterpart. Class nature determines the elementary modalities of Chinese socialist law. Accordingly, the law:

- a. requires a thorough insistence on a People’s Democratic Dictatorship in the socialist legal design.

<sup>31</sup> “Comprehensive Brief on the Judicial Reform (No. 3) (司法改革综合简报 (第三号))”, issued by the Judicial Reform Office of the Political and Legal Organs of the Central Government on September 30, 1952, in: Reference Documents for Judicial Reform and Judicial Construction, compiled and printed by the Judicial Reform Office of the Political and Legal Organs of the Central Government in April 1953, p. 23.

<sup>32</sup> Legal education was seen by the CCP as an important battlefield in practicing Marxist-Leninist theories of state and law. The ideological transformation imposed by class doctrine was also inescapably extended to this area. It was ordered that: “Local governments should also take advantage of this opportunity to organize professors from the departments of politics and law to take part into the judicial reform movement and to help them carry out ideological transformation. [...] At the same time, we should select appropriate teachers to strengthen the education of politics and law so as to facilitate the rectification and transformation of the departments of politics and law.” Instructions of the Central Committee of the Communist Party of China (supra note 28), pp. 316–317.

<sup>33</sup> For example, the official statements on the people’s legal (judicial) system were, notably, concisely summarized in an article published in the People’s Daily on August 22, 1952, entitled “Eliminate the Old Legal Views against the People (肃清反人民的旧法观点)”.

By essentially regarding “the state apparatus, including the army, the police and the courts, as the instrument by which one class oppresses another”,<sup>34</sup> it is ordered that “the people’s judicial organs should protect the interests of the people, exercise dictatorship over the enemy and carry out ruthless suppression over them.”<sup>35</sup>

- b. rejects crucial Western (universal) legal principles and values. For example, the legal principles of “equality before law” as well as “*Nulla poena sine lege*” were distorted under the analytical framework of class nature and denounced as “fail[ing] to differentiate between the enemy and ourselves” and “serv[ing] the enemy of the people.”<sup>36</sup>
- c. repudiates judicial independence and emphasizes the concentrated and united leadership of the Party over judicial work. It was argued that: “People’s justice is an integral part of the people’s political power. [...] But the old legal point of view requires the judicial work to be mysterious and special. It duplicates the so-called ‘judicial independence’ of the bourgeois ‘separation of powers’.”<sup>37</sup>
- d. ignores and defies procedural justice and implements what is referred to as the “mass line (群众路线)” of judicial work. The legal-procedural arrangements in litigation were condemned as “seriously divorced from the masses”. “There are many judicial personnel who believe that a case cannot be handled without procedures or without complete procedures. [...] Some courts handle a case through more than 30 procedures from the beginning to the end. In some judicial organs, the tedious and sluggish old judicial procedures are almost unchanged.”<sup>38</sup> The existence of legal procedures “makes the judicial organs ‘Yamen-like’ and [causes them] to develop into the ‘master’ style of suppressing the people.”<sup>39</sup> By contrast, what was advocated, was a kind of “mass line” trial based on the judicial experiences of the CCP in the

<sup>34</sup> MAO Zedong (supra note 18), p. 1476.

<sup>35</sup> LI Guangcan (李光灿)/LI Jianfei (李剑飞), Eliminate the Old Legal Views against the People (肃清反人民的旧法观点) of August 22, 1952, in the People’s Daily. Expressing similar viewpoints: “We should realize that judicial work is an important part of state power, a direct tool for suppressing reactionaries and protecting the people, and a powerful weapon for organizing and educating the people to conduct class struggle.” DONG Biwu (supra note 29), p. 121; “China’s socialist legal system is a legal system of the people’s democratic dictatorship under the leadership of the working class. It embodies the will of the working class, is a tool to suppress the enemy, punish criminals and protect the people, and is a tool to consolidate the people’s democratic dictatorship and ensure socialist construction.” ZHENG Pu (郑朴), Thoroughly Destroy the Old Legal System and Eliminate the Bourgeois Legal Thoughts (彻底摧毁旧法制, 肃清资产阶级法律思想), in: Faxue Yanjiu, No. 2, 1964, p. 19.

<sup>36</sup> LI Guangcan (李光灿)/LI Jianfei (李剑飞), supra note 35.

<sup>37</sup> LI Guangcan (李光灿)/LI Jianfei (李剑飞), supra note 35.

<sup>38</sup> LI Guangcan (李光灿)/LI Jianfei (李剑飞), supra note 35.

<sup>39</sup> LI Guangcan (李光灿)/LI Jianfei (李剑飞), supra note 35.

revolutionary phase.<sup>40</sup> Another crucial measure to strengthen the “mass line” of judicial work was to select a substantial amount of judicial personnel from the demobilized soldiers as well as from the people’s groups of workers, peasants, young people, and women etc., with determinations being based on – instead of indispensable professional backgrounds – their “political quality (政治素质)” in demonstrating an impregnable standpoint regarding the so-called proletariat revolution.

On the whole, the socialist law of the PRC as molded by class nature falls into two extremes of pan-politicization and anti-rationalization. On the one hand, the treatment of law and judicial organs as pure political instruments of class rule impedes any possibility for constructing a universal and impartial legal system for all society members. The legal rights and obligations of society members (as to be discussed in the next part) depend highly on their class and political status. Under such a class-based and politicized legal system, however, not only those who were discerned as “class enemies”, but also the (ought to be) privileged “people” themselves were vulnerable victims, because measures for distinguishing “enemy” and “people” were mostly vague and oscillated in different scenarios as proved by all the continuous political movements in the period before 1978.

On the other hand, a class understanding of law and state institutions subordinates the latter to the political will of the Party and is hostile to any stability and uniformity brought by the rationalization and institutionalization of state laws and organs. The movements initiated in the name of the law in the 1950s were in their essence merely class-oriented political movements in the legal arena, which clarifies the contempt for legal procedures, the resolute rejection of both judicial independence and professionalism, and the one-sided emphasis on the mass line in these movements; simultaneously, and unfortunately, these movements predicted the unavoidable destiny of state laws being replaced by the CCP’s informal and capricious policies, orders, decisions, and programs in the following decades (especially in the Cultural Revolution).

<sup>40</sup> The “mass line” trial was widely developed in the revolutionary base areas of the CCP. The representative example of such kind of trial is known as the “Ma Xiwu (马锡五) Trial mode”. Ma Xiwu was the president of the high court of the Shanxi Gansu Ningxia border area. Ma Xiwu Trial applied the working principle of mass line to the trial mode of judicial work, and his trial mode is characterized by “simple procedures”, “no formality”, a “mixture of mediation and court trial”, and the so-called “convenience for the people”. See LI Juan (李娟), An Analysis of the Background of Ma Xi Wu’s Trial Mode (马锡五审判方式产生的背景分析), in: Falü Kexue, No. 2, 2008, pp. 168–169; XIAO Zhoulu (肖周录)/MA Jingping (马京平), A New Study on the Trial Mode of Ma Xiwu (马锡五审判方式新探), in: Faxuejia, No. 6, 2012, pp. 8–12; YANG Yonghua (杨永华)/FANG Keqin (范克勤), An Example of Trial Mode in Shanxi Gansu Ningxia Border Area (陕甘宁边区审判方式的一个范例), in: Xiandai Faxue, No. 3, 1980, pp. 51–52; WANG Limin (王立民), Also on the Trial Mode of Ma Xiwu (也论马锡五审判方式), in: Dongfang Faxue, No. 6, 2009, pp. 10–11.

#### IV. The penetration of class nature into Chinese socialist legislation – a positivistic investigation

Under the circumstance of the post-1949 political fanaticism associated with the military victory of the CCP and the founding of the PRC, as well as the insistence on an instrumentalist interpretation of law as the expression of class will, it was logically consistent to implement the class road in wide-ranging areas of state and society, and among the resulting efforts legislation was deemed the most symbolic and powerful instrument for manifesting and realizing the class will of the Party. A positivistic investigation demonstrates that class nature penetrated widely into early state legislation of the PRC predominantly in the form of “declaratory provisions” and “rights-distinguishing provisions”.

##### 1. Class nature in declaratory provisions

Declaratory legal provisions embodying class nature usually concerned laws which were of great political significance, especially the constitutional laws and organizational laws of crucial state organs. In the PRC, constitutional law is regarded as the fundamental law of the state and, hence, is the appropriate and most important place to stipulate and express class nature as one of the fundamental natures of the Chinese socialist state. In all the Constitutions of the PRC, class nature provisions have been an indispensable constitutional component. Notwithstanding their political significance, these class provisions remained to a great extent declaratory, inasmuch as there has, from the founding of the PRC up to now, not been any corresponding operationalized legal mechanism for their enforcement. Rather, the class provisions were conceived more to express the political symbolic meaning of class narrative, and as the constitutional and legal history of the PRC shows, the class route was predominately ordered in the informal decisions and notices of the CCP and mostly practiced in the form of continuous political movements – rather than as some kind of constitutional (legal) mechanism – and essentially served the political struggles of the Party.

In constitutional laws, class nature was principally used to define the essence of state power and to indicate the political and class basis of the newly founded PRC. In the “Common Program of the Chinese People’s Political Consultative Conference”,<sup>41</sup> which functioned as the quasi-constitution of the PRC until 1954, it was stipulated that:

*The Chinese People’s Democratic Dictatorship is the state power of the people’s democratic united front composed of the Chinese working class, peasantry, petty bourgeoisie, national bourgeoisie and other patriotic democratic elements, based on the*

<sup>41</sup> 中国人民政治协商会议共同纲领, adopted by the first plenary session of the Chinese People’s Political Consultative Conference on September 21, 1949. See <<http://www.cppcc.gov.cn/2011/12/16/ART11513309181327976.shtml>>, visited 30 November 2021.

*alliance of workers and peasants and led by the working class. (Paragraph 2 of the Preamble)*

*The People's Republic of China is a New Democratic or a People's Democratic state. It carries out the people's democratic dictatorship led by the working class, based on the alliance of workers and peasants, and uniting all democratic classes and all nationalities in China. It opposes imperialism, feudalism and bureaucratic capitalism and strives for independence, democracy, peace, unity, prosperity, and strength of China. (Article 1)*

Similar provisions for presenting class nature as the essence of state power can be found in all the subsequent Constitutions of the PRC. The Constitution of 1954, which was the first Constitution of the PRC, proclaims: "The People's Republic of China is a people's democratic state led by the working class and based on the alliance of workers and peasants." (Article 1) In the Constitutions of 1975 and 1978, which were greatly influenced by the "Great Proletarian Cultural Revolution", the constitutional class provisions were vastly expanded and generalized. Class nature was not limited merely to defining the highly abstract nature of the socialist state power; rather, it was wielded to constitutionalize the "Continued Revolution under the Dictatorship of the Proletariat (无产阶级专政下继续革命)",<sup>42</sup> which was the guiding theory of the Cultural Revolution proposed by Mao Zedong, and it concretely stipulated, *par excellence*, the "insistence on the struggle of the proletariat against the bourgeoisie and the struggle for the socialist road against the capitalist road",<sup>43</sup> "putting proletarian politics in command (无产阶级政治挂帅)",<sup>44</sup> the "all-round dictatorship of the proletariat over the bourgeoisie in the superstructure",<sup>45</sup> the obligation for "[c]ulture and education, literature and art, physical education, health work and scientific research work [to] all serve proletarian politics",<sup>46</sup> etc. These constitutional class provisions embodied and

<sup>42</sup> Paragraph 3 of the Preamble of the Constitution of 1975: "Socialist society covers a considerably long historical period. Throughout this historical period, there are classes, class contradictions and class struggle, there is the struggle between the socialist road and the capitalist road, there is the danger of capitalist restoration and there is the threat of subversion and aggression by imperialism and social-imperialism. These contradictions can be resolved only by depending on the theory of continued revolution under the dictatorship of the proletariat and on practice under its guidance." Paragraph 4 of the Preamble of the Constitution of 1975: "We must [...] persist in continued revolution under the dictatorship of the proletariat, so that our great motherland will always advance along the road indicated by Marxism-Leninism-Mao Zedong Thought." Paragraph 4 of the Preamble of the Constitution of 1978: "In accordance with the basic line of the Chinese Communist Party for the entire historical period of socialism, the general task for the people of the whole country in this new period is: To persevere in continuing the revolution under the dictatorship of the proletariat [and to] carry forward the [...] class struggle [...]"

<sup>43</sup> Paragraph 5 of the Preamble of the Constitution of 1978.

<sup>44</sup> Article 11 of the Constitution of the 1975; Article 10 of the Constitution of the 1978.

<sup>45</sup> Article 12 of the Constitution of the 1975.

<sup>46</sup> Article 12 of the Constitution of the 1975.

aimed to constitutionally enshrine the decisions and orders of the CCP for undertaking class struggles and were therefore ultimately of mere political symbolic meaning. With the abandonment of the class route and the "rectification to restore order" after the Cultural Revolution, the many class provisions were expunged from the constitutional text and what remains in the current Constitution of 1982, like the Constitution of 1954, is only the provision for presenting the class nature as the essence of socialist state power.<sup>47</sup>

Corresponding to the declaratory constitutional class provisions, it is also common to articulate the tasks of crucial state organs to safeguard the socialist people's democratic dictatorship in their organizational laws, especially in the organizational laws of public security organs, procuratorates and courts (公检法), which are seen as indispensable instruments for class rule. In the "Interim Organizational Regulation of the People's Court of the People's Republic of China",<sup>48</sup> it was stipulated that: "[The mission] of the People's Courts is to consolidate the people's democratic dictatorship, maintain the social order of new democracy, safeguard the people's revolutionary achievements [...]" (Article 3) In the "General Rules for the Organization of People's Procuratorates at All Local Levels",<sup>49</sup> one of the key tasks of the people's procuratorates was defined as "punish[ing] the counterrevolutionaries" as class enemies. (Article 2 paragraph 2) The struggle against counterrevolutionaries was further stipulated as a crucial function of the public security organs.<sup>50</sup> Similar declaratory class provisions can also be found, for instance, in laws concerning labor unions,<sup>51</sup> military service,<sup>52</sup> militia organization,<sup>53</sup> and agricultural production cooperatives (农业生产合作社).<sup>54</sup>

<sup>47</sup> "The People's Republic of China is a socialist state under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants." (Article 1 paragraph 1 of the Constitution of 1982). Although the formulation of "class struggle" still existed in the preamble of the Constitution of 1982, it could no longer impel any political movements in the form of class struggle as in the Cultural Revolution.

<sup>48</sup> 中华人民共和国人民法院暂行组织条例, adopted at the 12th meeting of the Central People's Government Committee on September 3, 1951. See also Article 3 of the Organizational Law of the People's Republic of China on the People's Courts (中华人民共和国人民法院组织法), adopted at the first session of the first National People's Congress on September 21, 1954.

<sup>49</sup> 各级地方人民检察院组织通则, adopted at the 12th meeting of the Central People's Government Committee on September 3, 1951.

<sup>50</sup> See Article 2 Paragraph 2 of the Organizational Regulations of the Police Stations (公安派出所组织条例), adopted at the fourth meeting of the Standing Committee of the National People's Congress on December 31, 1954. See also, Article 2 of the Regulations of the People's Republic of China on People's Police (中华人民共和国人民警察条例), adopted by the Standing Committee of the National People's Congress on June 25, 1957.

<sup>51</sup> See Articles 1 and 9 of the Law of the People's Republic of China on Labor Union (中华人民共和国工会法, 1950).

<sup>52</sup> See Article 3 of the Law of the People's Republic of China on Military Service (中华人民共和国兵役法, 1955).

<sup>53</sup> See Article 3 of the Provisional Regulations of the People's Republic of China on Militia Organizations (中华人民共和国民兵组织暂行条例, 1952).

<sup>54</sup> See Articles 1 and 2 of the Model Charter of Agricultural Production Cooperatives (农业生产合作社示范章程, 1955).

## 2. Class nature in rights-distinguishing provisions

The other type of penetration of class nature into laws can be found in rights-distinguishing provisions. In such legislation, class nature functioned so as to create binding internal measures for conceiving legal rights, and the rights of certain society members were limited or excluded due to their class identities. A positivistic investigation demonstrates that these provisions concerned principally land reform, election rights, and counterrevolutionary activity.

### a) Class provisions in land reform laws

The problem of land ownership was one of the key issues used by the CCP to assail the bourgeois regime of the KMT and to attract and summon the peasant class in support of the CCP revolution. Shortly after the founding of the PRC, in 1950, the PRC promulgated the land reform law (土地改革法),<sup>55</sup> which aimed to “abolish land ownership through feudal exploitation of the landlord class and implement land ownership of the peasants”. (Article 1) The foremost measure taken by the CCP to realize the land reform was the recognition and division of the class components (阶级成分) among rural society members. Principally based on their land and other property situations, rural society members were systematically divided into “landlords (地主)”, “rich peasants (富农)”, “middle peasants (中农)”, “poor peasants” (贫农) and “hired peasants (雇农)”.<sup>56</sup>

Landlords were defined as those who “occupy land, do not work themselves, or have only incidental work, but live by exploitation. The way of exploitation of landlords is mainly to exploit peasants by means of land rent. In addition, they may also lend money, hire workers, or engage in industry and commerce. However, the main way of exploitation of landlords is to exploit peasants by means of land rent.”<sup>57</sup> And hired peasants were defined as those who “have no land or [production] means at all. Some of them have a small part of land and [production] means, and they sell their labor force completely or mainly for a living.”<sup>58</sup> Other rural classes lied in-between according to the amount of their land and other properties.

Corresponding to their class identities, the rights of rural society members were also distinguished. Landlords, who were discerned as the exploiting class, were deprived of land ownership and other property rights; their “lands, farm animals, farm implements, surplus foods and houses in the countryside were confiscated”<sup>59</sup> and “the confiscated lands and other

production means were to be re-allocated to the miserable peasants having no lands or having only few production means.”<sup>60</sup> Conversely, the land and other properties of rich peasants and middle peasants were basically protected and not infringed upon.<sup>61</sup> In the middle of 1950s, the limitation on the rights of landlords was further extended from a pure deprivation of their property rights to limits on their right to join as a member in agricultural production cooperatives.<sup>62</sup> The same limitation was also imposed upon the rich peasants. Landlords and rich peasants were allowed to join the agricultural production cooperatives only through special review procedures,<sup>63</sup> and even after they gained membership they “had no rights to be elected and could not hold any important positions in the agricultural production cooperatives for some period.”<sup>64</sup>

### b) Class provisions in the election laws

Being defined as a state of the People’s Democratic Dictatorship, the newly founded PRC necessarily denied those who were discerned as class enemies any right to participate in the state organs of power in the form of election. As also indicated by Mao Zedong himself, under the system of the People’s Democratic Dictatorship “democracy is practiced within the ranks of the people, who enjoy the rights of freedom of speech, assembly, association and so on. The right to vote belongs only to the people, not to the reactionaries.”<sup>65</sup>

The class enemies in electoral legislation included mainly the landlord class and counterrevolutionaries. The “Electoral Law of the People’s Republic of China for the National People’s Congress and People’s Congresses at All Local Levels”<sup>66</sup> confirmed the general election rights of citizens, but it excluded the election rights of landlords who had not changed their class status and counterrevolutionaries who had been deprived of political rights. (Articles 4 and 5) Further, the bureaucrat capitalists who had been deprived of political

<sup>60</sup> Article 10 of the Land Reform law of 1950.

<sup>61</sup> Articles 6 and 7 of the Land Reform law of 1950.

<sup>62</sup> According to the Model Charter of the Agricultural Production Cooperatives, the Agricultural Production Cooperatives are “collective economic organizations of working peasants. [...] The purpose of developing agricultural production cooperatives is to gradually eliminate the capitalist exploitation system in the countryside, overcome the backwardness of the small-scale peasant economy [...]” (Article 1). And “the development principle of the agricultural production cooperatives is to rely on the poor peasants and unite the middle peasants in a consolidated way.”

<sup>63</sup> See article 8 of the Model Charter of the Advanced Agricultural Production Cooperatives (高级农业合作社示范章程), adopted at the third session of the first National People’s Congress on June 30, 1956. See also paragraph 39 of the National Program for Agricultural Development from 1956 to 1967 (1956年到1967年全国农业发展纲要), adopted at the second session of the second National People’s Congress of the People’s Republic of China on April 10, 1960.

<sup>64</sup> See Article 9 of the Model Charter of the Advanced Agricultural Production Cooperatives.

<sup>65</sup> MAO Zedong (supra note 18), p. 1475.

<sup>66</sup> 中华人民共和国全国人民代表大会及地方各级人民代表大会选举法, adopted at the 22th Meeting of the Central People’s Government Committee on February 11, 1953.

<sup>55</sup> 中华人民共和国土地改革法, adopted at the 8th meeting of the Central People’s Government Committee on June 28, 1950.

<sup>56</sup> Article 9 of the Land Reform law of 1950.

<sup>57</sup> The Decision on the Division of the Rural Class Components (关于划分农村阶级成分的决定), adopted at the 44th meeting of the Government Administration Council of the Central People’s Government on August 4, 1950.

<sup>58</sup> Supra note 57.

<sup>59</sup> Article 2 of the Land Reform law of 1950.

rights within a certain period of time also enjoyed no election rights.<sup>67</sup>

### c) Counterrevolutionary crime and its class-based politicization

The security and stability of newly founded state power was of extreme significance for the CCP in the early stages of the PRC. Due to the fact that the new state power was founded on the violent class revolution led by the CCP, the foremost measure for maintaining the security and stability of state power was, hence, to continue to oppress and eliminate all possible class enemies (counterrevolutionaries) also in the post-revolutionary period.<sup>68</sup> The legal measures to purge class enemies led to a notable criminal offense in the PRC's criminal legal history – the crime of counterrevolution (反革命罪), an offense which demonstrates the high and wide-ranging politicization of crimes based on class judgments.

In the “Regulation of the People’s Republic of China on Punishing Counterrevolutionaries” (hereafter, the Regulation of Counterrevolutionaries),<sup>69</sup> which functioned as one of the few criminal laws of the PCR for a long period before 1979,<sup>70</sup> counterrevolutionary crime was defined as a crime which “aims at overthrowing the people’s democratic regime and sabotaging the people’s democratic undertakings.” (Article 2) The most remarkable characteristic of the constitutive elements of counterrevolutionary crime was the “counterrevolutionary purpose (反革命目的)” of the suspect, which one-sidedly emphasized the subjective constitutive element of the crime. In defining the “counterrevolutionary purpose” of the suspect, his class (political) standpoint thus played a crucial role. In this sense, counterrevolutionary crime was highly politicized by class judgments and became a kind of political crime.<sup>71</sup>

Under the vague, subjective and typically abused standard of “counterrevolutionary purpose”, a large amount of non-criminal activity was defined as – and,

simultaneously, a large amount of common criminal activity was aggravated as – counterrevolutionary crime,<sup>72</sup> as can frequently be seen in some articles in the Regulation of Counterrevolutionaries. For example, the following acts were defined as being done “with the purpose of counterrevolution”: “robbing or destroying military facilities, factories, mines, forests, farms, dikes, traffics, banks, warehouses, insurance equipment or other important public or private property” (Article 9 paragraph 1); “poisoning, spreading pathogens or with other methods, causing major disasters to people, livestock or crops” (Article 9 paragraph 2); “disrupting the market or destroying the financial sector by obeying the orders of domestic and foreign enemies” (Article 9 paragraph 3); “inciting the masses to resist or sabotage the implementation of grain collection, taxation, public service, military service or other government decrees of the people’s government” (Article 10 paragraph 1); “sowing discord among people, democratic classes, democratic parties, people’s organizations or destroying the unity between the people and the government” (Article 10 paragraph 2), and “carrying out counterrevolutionary propaganda, inciting and spreading rumors” (Article 10 paragraph 3).

Class-based counterrevolutionary crime substantially corresponded to the requirements of the continuous political movements in the 1950s and 1960s featuring class struggle at their core,<sup>73</sup> and counterrevolutionary crime developed into a dominant and all-inclusive component of the criminal laws of the PRC prior to 1979. Especially in the Cultural Revolution, counterrevolutionary crime degenerated into an expansive instrument for political purification. Viewed retrospectively, what this class-oriented crime brought was criminal arbitrariness, numerous cases which were factually unsubstantiated and trumped-up or unjustly or incorrectly dealt with, and, finally, as China’s criminal law history shows, massive infringements of the basic rights of citizens.

<sup>67</sup> Article 19 paragraph 2 of the Constitution of 1954.

<sup>68</sup> See HE Bingsong (何秉松), A Dangerous Choice – My Opinion on Cancelling Counterrevolutionary Crime in the Criminal Code (一个危险的抉择——对刑法上取消反革命罪之我见), in: Zhengfa Luntan, No. 2, 1990, pp. 69–70.

<sup>69</sup> 中华人民共和国惩治反革命条例, adopted at the 71st meeting of the Government Administration Council on February 9, 1951 and approved at the 11th meeting of the Central People’s Government Committee on February 20, 1951.

<sup>70</sup> It is a remarkable phenomenon that, for a long period before 1979, there existed no unified criminal code in the PRC. Further, laws concerning crimes were also scarce. It was only in a few fields that were crucial to maintaining the security and stability of the new founded PRC where laws of a criminal nature were promulgated, e. g. regarding counterrevolutionary activity, corruption, state secrets, and the national currency. See KE Gezhuang (柯葛壮) (ed.), The 60 Years of the Criminal laws of the New China (新中国刑事法律六十年), Shanghai Shehui Kexueyuan Chubanshe, 2009, pp. 6–7, 9; GAO Mingxuan (高铭喧) / ZHAO Bingzhi (赵秉志), The Evolution of Chinese Criminal Legislation (中国刑事立法之演进), Falü Chubanshe, 2007, pp. 31–38.

<sup>71</sup> ZHOU Zhenxiang (周振想), My Opinion on Revising “Counterrevolutionary Crime” (修改“反革命罪”之我见), in: Faxue, No. 3, 1989, p. 18.

<sup>72</sup> Mao Zedong himself also endorsed such an aggravation of common crimes as “counterrevolutionary crimes”, as he pointed out: “It should be affirmed that there are still a small number of counterrevolutionaries carrying out counterrevolutionary sabotage of one kind or another. For example, they kill cattle, set fire to granaries, wreck factories, steal information and put up reactionary posters.” MAO Zedong (毛泽东), On the Ten Major Relationships (April 25, 1956) (论十大关系), in: Selected Works of Mao Zedong, Vol. 5, Renmin Chubanshe, 1977, p. 281.

<sup>73</sup> “Punishing counterrevolutionaries” became a basic and convenient strategy for initiating class struggle and mass movements in the whole society as well as in the organs of the Party and the state in the 1950s and 1960s, as emphasized by Mao Zedong: “In future, not only must the suppression of counterrevolutionaries in society continue, but we must also uncover all the hidden counterrevolutionaries in Party and government organs, schools and army units. We must draw a clear distinction between ourselves and the enemy. If the enemy is allowed to worm his way into our ranks and even into our organs of leadership, we know only too well how serious a threat this will be to the cause of socialism and to the dictatorship of the proletariat.” MAO Zedong (supra note 72), p. 301.

### 3. A brief summary: Class nature as manifested between the illusion of political purity and the reality of social regularity

As demonstrated above, the legal history of the PRC before 1978 saw the penetration of class nature into legislation principally in the form of declaratory provisions and rights-distinguishing provisions. However, the salience and prevalence of class narratives in a long period after 1949 was essentially coerced in massive and vigorous political propaganda, and its penetration into laws is, to a large extent, the consequence of this political coercion; further, it was highly symbolic, fragmental, and selective, aiming merely to express and achieve a certain kind of political (class) purity in the laws under the new state power of the People's Democratic Dictatorship.

Due to the absence of enforceable and operationalized institutional designs (which, in the early stages of the PRC, viewed objectively, were not only rationally and intellectually unobtainable due to the "legal ruin" engendered by the CCP itself, but also not truly desired by the CCP, which practically, as in its revolutionary phase, preferred informal orders, decisions, and instructions of its own), class provisions in the Constitution as well as in important organizational laws of state organs are only a symbolic expression of political purity. Conversely, rights-distinguishing class provisions achieved and practiced a certain kind of class purity by normatively and bindingly arranging – and intruding into – the concrete rights of society members based on their class identities and standpoints. However, the enforcement of rights-distinguishing class provisions was highly fragmental and selective; it concentrated only on those areas which were of great political significance, these being, as mentioned above, the areas of land reform, election, and counterrevolutionary activities. In this sense, despite the salience or even fanaticism of class narratives in the legal arena, the penetration of class nature into legislation before 1978 was quite limited. The broader social areas, which are of less (or no) political significance and can be *per se* immune to the applications of class nature, were hence largely left legally unregulated.

The class-oriented understanding of law as one of the core theories of Marxism-Leninism as well as of Mao Zedong Thought did not give rise to an (anticipated) intact legal system having a thorough class nature in China. Rather, the symbolic, fragmental, and selective appearance of class nature in the legal arena meant that the legally unregulated broader social areas needed a legal system which was more oriented to satisfying the real requirements of social regularity. The demand for real social regularity before 1978 through a rationalized legal system was objectively suppressed and overshadowed by the continuous political campaigns and only partly and selectively satisfied by the informal and non-state policies of the CCP. With the ebb of the political fanaticism and the transformation of the political route after the Cultural Revolution, the illusion of political

(class) purity encouraged by the successive political movements rapidly gave way to the real social regularity impelled by the requirements of economic reform.

### V. The internal withering away of class nature and the external construction of "China-West antagonism" based on class nature in the Reform and Opening era

The market-oriented reforms adopted after 1978 greatly impeded the possible applications of class nature in the legal arena and led to an inevitable withering away of the law's class narrative in the Reform and Opening era. With the decline of political coercion, the parochial and thoroughly politicized understanding of law as a mere instrument of class rule appeared more powerless and ivory-towered.<sup>74</sup> Rather, a legal system has to face the real social regularity of a transforming society that is encountering issues such as the increased complexity associated with gradual economic marketization, (relative) ideological diversification, the need to enhance modern governance, demands for openness to the West, etc.

Nevertheless, the irreversible internal withering of class narratives in state legislation and governance in the Reform and Opening era did not mean the abandonment of class nature. Rather, it remained a crucial instrument for externally resisting a complete political and legal Westernization, and the CCP emphatically and persistently expressed the task of resisting "bourgeois liberalization (资产阶级自由化)" after 1978. The emphasis on the antagonism between Chinese socialism and Western capitalism based on their divergent class underpinnings has consequently determined the connotations and boundaries of the Chinese socialist rule of law state, which represents the greatest achievement of the legal reforms since 1978.

### 1. The fundamental internal transformation of Chinese socialist law: From political to economic justification

As demonstrated above, from the very beginning of the PRC to 1978, the socialist nature of Chinese law was decisively defined by its class nature under the class theory of Marxism-Leninism and its Chinese adaptation. However, the one-sided emphasis on class nature and the political appurtenance of law greatly precluded an evolution of laws and legislation into an independent and complete system during the long period of political turbulence in which the will of even the ruling class was hardly discernable – and which degenerated into the will of a handful of CCP leaders. Market-oriented reform brought a basis transformation of legal understanding in China: The political (class) nature of law was replaced by its regularity for a society centered on economic development.

<sup>74</sup> See also *Chih-Yu Shih*, China's Socialist Law under Reform: The Class Nature Reconsidered, in: *The American Journal of Comparative Law*, Vol. 44, No. 4, 1996, p. 631–632.

The fundamental internal transformation was initiated by Deng Xiaoping, who is regarded as the chief designer of Reform and Opening. In his series of speeches, Deng Xiaoping effectively re-defined “socialism”. He said:

*To build socialism, it is necessary to develop the productive forces. Poverty is not socialism. To uphold socialism, a socialism that is to be superior to capitalism, it is imperative first and foremost to eliminate poverty.*<sup>75</sup>

*Predominance of public ownership and common prosperity are the two fundamental socialist principles that we must adhere to. We shall firmly put them into practice.*<sup>76</sup>

Deng Xiaoping’s socialism largely loosens the political and ideological underpinnings and constraints of socialism. What he emphasized is the development of productive forces, the realization of economic prosperity, and the de-politicization of the conception of “socialism”. More importantly, based on his utilitarianism, he successfully moderated and ended the antagonism between the economic models of socialism and capitalism by obscuring the previously strictly held division between a “planned economy (计划经济)” and a “market economy (市场经济)”, with the former being equivalent to socialism and the latter being tantamount to capitalism. Deng Xiaoping pointed out:

*We must understand theoretically that the difference between capitalism and socialism is not a market economy as opposed to a planned economy. Socialism has regulation by market forces, and capitalism has control through planning.*<sup>77</sup>

*Don’t think that any planned economy is socialist and any market economy is capitalist. That’s not the way things are. In fact, planning and regulation by the market are both means of controlling economic activity, and the market can also serve socialism.*<sup>78</sup>

The economic thoughts of Deng Xiaoping were then officially theorized as the “socialist market economy

(社会主义市场经济)<sup>79</sup> in the 1990s. Corresponding to the economic re-definition of socialism, the understanding of law also transformed. Indeed, from the beginning of 1980s, with the return of reasonableness in the ruling Party and the demand for a restoration of the social order, laws began to function as the paramount means of regulating broader social areas once left as legal vacuums and of safeguarding the socialist economic construction. The previous class understanding of law was greatly cleared away both in legislation<sup>80</sup> and in Chinese legal scholarship.<sup>81</sup> And the 1980s saw the boom of “clean” – meaning “class-free” – legislation and the prototype of a certain legal system.<sup>82</sup>

<sup>79</sup> The conception of the “socialist market economy” was systematically expounded for the first time in the “Decision of the Central Committee of the Communist Party of China on Several Issues Concerning the Establishment of the Socialist Market Economy System”, adopted at the Third Plenary Session of the 14th Central Committee of the Communist Party of China on November 14, 1993. (Hereafter, the Decision of 1993)

<sup>80</sup> The most notable measure to weaken and eliminate the class nature of legislation was the “Decision of the Standing Committee of the National People’s Congress on Approving the Report of the Legislative Affairs Working Committee on the Situation and Opinions on the Checking up of Laws promulgated before the end of 1978”. This decision revised, replaced, and eliminated considerable class provisions in laws enacted prior to 1978. The typical legislation on class nature enumerated in part 3 of the present paper were mostly abolished, for example, the Interim Organizational Regulation of the People’s Court, the land reform law, the Regulation of Counterrevolutionaries, and the Model Charter of the Advanced Agricultural Production Cooperatives.

<sup>81</sup> In the 1980s, a debate surrounding the nature of law erupted in Chinese legal scholarship and, considered retrospectively, achieved in reality the real “enlightenment” of Chinese jurisprudence, which commenced to treat law as an independent object of study instead of uncritically reiterating the political and legal narratives of the ruling Party. Against the conservative and leftist legal scholars who continued to insist on the class nature of law, a majority of legal scholars argued for the regularity of law by emphasizing the “social nature of law (法的社会性)”, namely, the functions of law for economic construction and for normalization in other social areas. For some relevant literature, see ZHOU Fengju (周凤举), Is Law Simply a Tool of Class Struggle? – Also on the Social Nature of Law (法单纯是阶级斗争工具吗? ——兼论法的社会性), in: Faxue Yanjiu, No. 1, 1980, pp. 37–41; ZHANG Jufang (张居芳), Class Nature and Functions of Law (法的阶级性与法的作用), in: Faxue Yanjiu, No. 5, 1980, pp. 9–11; LIU Han (刘瀚)/WU Daying (吴大英), Also on the Class Nature of Law – A Discussion with Comrades Zhou Fengju and Tang Zongyao (也谈法的阶级性——与周凤举、唐琮瑶二同志商榷), in: Faxue Yanjiu, No. 3, 1980, pp. 9–16; SUN Guohua (孙国华)/ZHU Jingwen (朱景文), A Tentative Discussion on the Class Nature and Social Nature of Law (试论法的阶级性和社会性), in: Faxue Yanjiu, No. 4, 1982, pp. 4–27; TANG Sizhi (唐驷之)/YUAN Mingjian (袁明健), On Class Nature and Social Nature as the Dual Nature of Law (论法具有阶级性和社会性两重性质), in: Faxue Zazhi, No. 4, 1984, pp. 48–50; JIANG Lishan (蒋立山), Law is the Unequal Recognition of Diverse Interests – On the class nature of law (法是对多元利益的平等确认——法律阶级性问题浅谈), in: Zhongguo Faxue, No. 4, 1988, pp. 60–64.

<sup>82</sup> Contrary to the legislation before 1978 which concentrated merely on the areas of great political significance (for example, organizational laws of state organs and laws concerning land reform, elections, and counterrevolutionaries), legislation in the 1980s was oriented essentially on the real demands of social regularity. Laws which were of less (or no) political significance were widely promulgated in the fields of civil litigation, administrative litigation, environmental protection, Sino-foreign joint venture, foreign investment, contract, bankruptcy, marriage, inheritance, trademark management, environmental protection, food safety and health, urban planning, intellectual property, patent, product quality, taxation, household registration, health and quarantine, fishery, forest man-

<sup>75</sup> DENG Xiaoping (邓小平), To Uphold Socialism We Must Eliminate Poverty (社会主义必须摆脱贫困) (April 26, 1987), in: The Selected Works of Deng Xiaoping, Vol. III, Renmin Chubanshe, 1993, p. 225.

<sup>76</sup> DENG Xiaoping (邓小平), Unity Depends On Ideals and Discipline (一靠理想二靠纪律才能团结起来) (March 7, 1985), in: The Selected Works of Deng Xiaoping, Vol. III, Renmin Chubanshe, 1993, p. 111.

<sup>77</sup> DENG Xiaoping (邓小平), Seize the Opportunity to Develop the Economy (December 24, 1990) (善于利用时机解决发展问题), in: The Selected Works of Deng Xiaoping, Vol. III, Renmin Chubanshe, 1993, p. 364.

<sup>78</sup> DENG Xiaoping (邓小平), Remarks Made During an Inspection Tour of Shanghai (January 28–February 18, 1991) (视察上海时的谈话), in: The Selected Works of Deng Xiaoping, Vol. III, Renmin Chubanshe, 1993, p. 367.

Subsequently, the legal systematization that had been characterized by a large amount of individual legislation in the 1980s obtained in the 1990s an integrative force under the socialist market economy. In Jiang Zemin's Report at the 14th National Congress of the CCP in 1992, it was stated that: "All due attention should be given to the legal system. To establish a socialist market economy, we urgently need to strengthen legislation. In particular, we need to draw up laws and regulations that will ensure the Reform and Opening, strengthen macro-economic managements and regulate micro-economic behaviors." Later, this provision was widely and concisely summarized as "The socialist market economy is an economy under the legal system (社会主义市场经济是法制经济)". Whilst the legal development in the 1980s was mainly based on the (instinctive) reflections on the disastrous period before 1978 and the demands for restoration of order,<sup>83</sup> the CCP's emphasis on the legal system in the 1990s originated principally in its appreciation of the decisive functions that law and its regularity serve in developing the socialist market economy.<sup>84</sup>

The socialist market economy offered an initial and fundamental justification for the existence of the legal system and impelled the further evolution and perfection of the whole Chinese legal system. Besides the economic arena, the initial economy-oriented understanding of law propelled also the evolution of laws in other areas which are not necessarily directly connected with the realization of economic utility, but which are indispensable for a modern state, e.g. protection of individual rights,<sup>85</sup> respect and guarantee of human rights,<sup>86</sup> protection of private property,<sup>87</sup> enhancement of the governance capacity of the government, and openness to the outside world, *inter alia*, the West. In 2011, it was officially announced that "the socialist legal

agement, fire control, etc. In the 1980s, nearly 100 laws (including legal revisions) were promulgated by the National People's Congress and its Standing Committee, not even taking into account the large number of regulations adopted by the State Council, its ministries, and local People's Congress and governments. For relevant statistics, see the list of legislation in the 1980s in the database of Beida fabao (<<http://www.pkulaw.cn/>>).

<sup>83</sup> Chih-Yu Shih, China's Socialist Law under Reform: The Class Nature Reconsidered, in: *The American Journal of Comparative Law*, Vol. 44, No. 4, 1996, p. 627.

<sup>84</sup> In the economic arena, laws and regulations were used to define and establish wide-ranging systems concerning the market economy, e.g. the modern corporation system, the competition system, price mechanisms, the labor market, the real estate market, intellectual property, macro-control systems, the finance and tax system, the investment system, property rights, and the social security system. See the points listed in the Decision of 1993.

<sup>85</sup> The most important measure to protect individual rights in the 1990s was the final elimination of "counterrevolutionary crime" in the criminal law of the PRC in 1997. Through the revision of criminal law, counterrevolutionary crime, which had originated already with the founding of the PRC, was replaced by the "crime of endangering state security (危害国家安全罪)", which cast off the class nature and was of greater neutrality.

<sup>86</sup> The constitutional amendment of 2004.

<sup>87</sup> The constitutional amendment of 2004.

system with Chinese characteristics has been established."<sup>88</sup>

## 2. "External class nature": The ideological self-justification against Westernization

The economic instrumentalist understanding of law – as opposed to the former political instrumentalist understanding of law – greatly achieved the internal de-classification of law. Paradoxically, with the internal ebb of the class nature narrative, class nature remained or was in fact largely strengthened as a crucial ideological instrument for conceiving, constructing, and maintaining China-West antagonism, and it was projected externally to resist the West, or in the words of Deng Xiaoping, to prevent "bourgeois liberalization" and "peaceful evolution (和平演变)".<sup>89</sup> Sharply contrary to the positive mitigation of path divergences between China and the West in the economic arena, the political and ideological demarcation between China and the West was strictly insisted on from the very beginning of the Reform and Opening, as Deng Xiaoping repeatedly emphasized:

*The so-called bourgeois liberalization means the total Westernization of China and taking the capitalist road.*<sup>90</sup>

*At the Third Plenary Session of the Eleventh Central Committee the Party decided on the policy of opening to the outside world and at the same time demanded a curb on bourgeois liberalization. These two things are related. Unless we curb bourgeois liberalization, we cannot put our open policy into effect.*<sup>91</sup>

*Since the downfall of the Gang of Four an ideological trend has appeared that we call bourgeois liberalization. Its exponents worship the "democracy" and "freedom" of the Western capitalist countries and reject socialism. This cannot be allowed. China must modernize; it must absolutely not liberalize or take the capitalist road, as countries of the West have done.*<sup>92</sup>

In the reports of the CCP's National Congresses since the beginning of the 1990s, the firm standpoint of the CCP against "bourgeois liberation" has been

<sup>88</sup> The speech of WU Bangguo (吴邦国) on March 10, 2011, who was the then Chairman of the Standing Committee of the National People's Congress.

<sup>89</sup> DENG Xiaoping (邓小平), We Must Adhere to Socialism and Prevent Peaceful Evolution Towards Capitalism (November 23, 1989) (坚持社会主义, 防止和平演变), in: *The Selected Works of Deng Xiaoping*, Vol. III, Renmin Chubanshe, 1993, p. 344.

<sup>90</sup> DENG Xiaoping (邓小平), China Can Only Take the Socialist Road (March 3, 1987) (中国只能走社会主义道路), in: *The Selected Works of Deng Xiaoping*, Vol. III, Renmin Chubanshe, 1993, pp. 207–208.

<sup>91</sup> DENG Xiaoping (邓小平), Bourgeois Liberalization Means Taking the Capitalist Road (May and June 1985) (搞资产阶级自由化就是走资本主义道路), in: *The Selected Works of Deng Xiaoping*, Vol. III, Renmin Chubanshe, 1993, p. 124.

<sup>92</sup> DENG Xiaoping (supra note 91), p. 123.

consistently reiterated in different phrasings.<sup>93</sup> It bears noting that the insistence on the irreconcilability of the political and ideological divergence between Chinese socialism (based on the alliance of workers and peasants and led by the working class) and Western (bourgeois) capitalism indicates neither a reversion into and restoration of the strong ideology of class nature internally nor the launching of some kind of “class struggle” against the West externally. Rather, the emphasis on class discrepancy as between China and the West aims essentially at maintaining the rule of the CCP as well as the Party-state system under its absolute leadership. With the CCP being defined as the “the vanguard of the Chinese working class” in its own official ideology,<sup>94</sup> the class-based China-West antagonism provides the CCP with a firm firewall for its rule. Deng Xiaoping clearly and vigilantly pointed out: “Bourgeois liberalization means rejection of the Party’s leadership”.<sup>95</sup> The ideological fencing off of the West was systematically theorized as the “four Cardinal Principles (四项基本原则)”<sup>96</sup> which helped strengthen and secure the self-justification of the CCP and its rule in the Reform and Opening era and which allowed for an increased exposure to the West and an accumulated penetration of Western values and ideologies among ordinary Chinese citizens.

### 3. Class nature in the current “socialist rule of law state”

The economy-driven legal development ongoing since the beginning of the 1990s finally gave rise to the “socialist rule of law state”, which was first defined in the constitutional amendment of 1999. Although the phrase “rule of law”, like its parallel forerunner “market economy”, presents an obvious approach to and simulation of the term’s Western counterparts, the original values contained in the Western conception of “rule of law” are rare in the Chinese “socialist rule of law”. The core elements and indispensable preconditions for Western rule of law (e.g. “democracy”, “liberty”, “multi-party system”, “general elections”, “checks and balances”, “judicial independence”, and “constitutional review”) collide fundamentally with the CCP’s Party-system as well as its corresponding

internal institutional designs (People’s Democratic Dictatorship, system of People’s Congresses, democratic centralism and amorphous relations between the organs of Party and state, etc.) as all of the former can endanger the overriding status of the CCP in the state and society.

In the current Chinese “socialist rule of law state”, the China-West antagonism based on class nature functions as a strong political and ideological defense against the possible adoption of the Western rule of law and limits immensely the connotations of the Chinese “rule of law”. What the Chinese “socialist rule of law” means lies essentially in the instrumentalist functions of law for regulating the modernizing Chinese society, its being principally driven, as indicated above, by the economic construction. Thus, the “socialist rule of law” is embodied *par excellence* as the large scale of legislation required by (neutral and objective) social regularity and the legally technical systematization and elaboration that results from the law-making processes;<sup>97</sup> yet it seldom involves the adoption and realization of those (Western) values and institutions which could threaten the CCP’s rule and its state building.

## VI. Conclusion

Inherited from classical Marxism-Leninism and practiced by the CCP’s own revolutionary movements, the class theory which upholds the class nature of the state and of the law exerted great influence on Chinese socialist law and determined the socialist nature of Chinese socialist law. On the one hand, in the early stages of the PRC, the class understanding of law decisively contributed to the abrogation of the legal system of the KMT, which was denounced as a “bourgeois pseudo-legal system”; on the other hand, class nature as “theoretical origin” also shaped the rudimentary forms of Chinese socialist law in the early stages of the PRC with pan-politicization and anti-rationalization (anti-professionalization) as its core characteristics. Distinguished from the class fanaticism encountered in continuous political campaigns before 1978, a positivistic investigation demonstrates that the real penetration of class nature into Chinese legislation in the form of declarative provisions and rights-distinguishing provisions was highly symbolic, fragmental, and selective; it was embodied in only some areas of high political significance and left the broader social fields legally unregulated.

The illusion of political purity based on class nature was then rapidly superseded by the real demand for social regularity in the market-oriented reforms occurring after 1978. The 1980s saw the withering away of class narratives in legislation as well as in Chinese legal scholarship and the boom of legislation which aimed

<sup>93</sup> In addition to the usual expression of being “against bourgeois liberation”, one finds, for instance, “never copy any models of the political system of the West” in the reports of the CCP’s National Congress of 2002 and 2012 and “ensure political security” in the report of the CCP’s National Congress of 2017.

<sup>94</sup> Paragraph 1 of the General Program of the Constitution of the CCP.

<sup>95</sup> DENG Xiaoping (邓小平), Take A Clear-Cut Stand Against Bourgeois Liberalization (December 30, 1986) (旗帜鲜明地反对资产阶级自由化), in: The Selected Works of Deng Xiaoping, Vol. III, Renmin Chubanshe, 1993, pp.196-197.

<sup>96</sup> The Four Cardinal Principles – “to keep to the path of socialism, to uphold the people’s democratic dictatorship, to uphold the leadership of the Communist Party of China, and to uphold Marxism-Leninism and Mao Zedong Thought” – are regarded by the CCP as the foundation for building the country. And the core function of the Four Cardinal Principles is defined as “opposing bourgeois liberalization”. See Paragraph 13 of the General Program of the Constitution of the CCP.

<sup>97</sup> In this sense, in observing the current Chinese legal system, the judgment that “differences between socialist law and liberal legalism are often exaggerated,” is tenable. See Hualing Fu / John Gillespie (ed.), Socialist Law in Socialist East Asia, Cambridge University Press, 2018, p. 19.

to fill the long-term legal vacuums left by the one-sided class understanding of law. Under the “socialist market economy” encountered since the beginning of the 1990s, law – notwithstanding its continuing instrumentalist interpretation – obtains a more consolidated status by serving the construction of the socialist market economy. The economy-driven legal modernization gave rise finally to the “socialist rule of law” in 1999.

Opposed to the internal ebb of class nature, class nature was still employed externally by the CCP to conceive, construct, and maintain ideological and political China-West antagonism in the Reform and Opening era. This class-based China-West antagonism aims essentially to achieve the self-justification of the CCP and helps resist the penetration of Western political and legal ideologies and values which are deemed capable of endangering the CCP’s Party-state system. By doing this, it limits greatly the connotations of Chinese “socialist rule of law”, excluding also its possible approximation to the Western model of rule of law. In this sense, although class nature no longer exists in the form of clear class provisions in the current Chinese legal system, it does continue to exist in a more intangible and recessive way by defining the narrow boundaries and the barren content of the “rule of law” in the Chinese socialist state. And the socialist nature of law under the Chinese “socialist rule of law” lies more in its absolute subordination to the CCP’s rule; after all, as unprecedentedly asserted in the latest constitutional amendment in 2018, “the leadership of the CCP is the most essential feature of socialism with Chinese characteristics.”

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### ***Klassenbegriff im modernen chinesischen sozialistischen Recht – Herkunft, Entwicklung und Status Quo***

*Beim Studium des chinesisch-sozialistischen Rechts kann die Befassung mit dem Begriff der Klassennatur nicht vermieden werden. Als Erbe des klassischen Marxismus-Leninismus und in den revolutionären Bewegungen der Kommunistischen Partei Chinas erprobt, beeinflusst die Klassentheorie zu Staat und Recht das chinesische Rechtssystem. Spiegelbildlich zur Geschichte der Volksrepublik China, mit ihrem Scheidepunkt im Jahre 1978, unterteilt sich auch das Klassenverständnis des Rechts in zwei Phasen des chinesisch-sozialistischen Rechts. Die vorliegende Bearbeitung zielt darauf ab, die theoretische Entwicklung der Klassentheorie zu Staat und Recht in China nachzuverfolgen und ihre Funktion für die Konstruktion von chinesisch-sozialistischer Rechtmäßigkeit einerseits und dem Entwurf konkreter Gesetzgebung andererseits zu analysieren. Darüber hinaus unternimmt sie den Versuch, angesichts der politischen „Berichtigung zur Wiederherstellung der Ordnung“ und der marktwirtschaftlichen Reformen seit dem Jahre 1978, zu untersuchen, ob und in welcher Form die Klassennatur auch heute noch im chinesisch-sozialistischen Recht unter der chinesischen „sozialistischen Rechtsstaatlichkeit“ existiert.*