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# INTERMIXTURE BY HISTORY: FOUR COMPONENTS IN CONTEMPORARY CHINA LEGAL SYSTEM

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## **Abstract**

In last millennium, China underwent three large-scale conquests by external power and interruption of traditional Chinese culture, the most significant result of which has been the justification of elite rule by minority over majority, whose obedience to law was based on the compulsion of the law. In Chinese history, there happened frequent supersession of dynasties, each of which was ruled by one or more families. Many revolutionaries and reforms were a process of deprivation of property by military force or by political power. Traditional Chinese culture was to a large extent been eliminated. Present Chinese legal system became a blended entity. Compared with economic law, far less change was introduced to the reform of the constitution and the political system. Furthermore, Chinese legal system has closely intertwined with governance style of individual leaders. These characterize the contemporary Chinese legal system.

**Keywords:** Chinese legal system, Chinese politics, communism, revolution, reform, law as a weapon

## **Introduction**

Time can be perceived as a line but state history can only be perceived as an undulating process. China can be taken as an example with a history full of twists and turns. China has been one of the few countries where people created a miracle in human history, by living in the same place for four thousand years (Cunningham 1896, p.24). People in China had more developed technology than medieval Europe before, but declined unexpectedly afterwards. Now they have to make great efforts to move forward (Fairbank 1987, p.

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3). Currently, China becomes one of the emerging economic powers that have long been rendered underdeveloped during a special historical stage over several past centuries. At present, China is the third largest country by surface area, the first largest country by population, and the second largest country by Gross Domestic Product (GDP), with the world's largest ruling party housing members up to the number of 86.7 million and still increasing (Organization Department of the Communist Party of China Central Committee 2014).

China is also one of the countries with the longest history, during part of which it enjoyed long prosperity and part of which it also suffered long humiliation. If only the recent two millennia are concerned, in roughly the first millennium China witnessed a long-term stable ascending process; while in roughly the second millennium China showed a basically descending tendency. Of course, recent three decades were a miraculous exception (Chen 2012), which apparently reversed the declining process, partly because the Chinese have been seeking integration into and cooperation with the outside world, after long autarky and isolationism from Qing dynasty, via the rule of the Nationalists, up to the end of the 1970s, when the Communist rulers finally found a way out of economic underdevelopment and cultural retrogression, a pitiful process opposite to most of the large countries in the world at the same period.

Due to its influence on world history and world politics, questions revolving around China have become some of the most interesting topics in today's academia. Among them, there is also increasing worldwide interest in Chinese legal system, reasons ranging from education, business, human rights, to diplomacy. Much research has been done on Chinese legal system as a whole, or on different branches of laws, different units of judiciary, different stages of development, and so on. To study Chinese legal system from different standpoints, either static or dynamic, can draw conclusions significantly differently. In the sense of authors of Chinese origin, there could be dissidents, moderate and radical critics from either outside or within the system, victims, reform advocators, as well as supporters, defenders, opportunists, yes-men, or those with vested interests, all making their judgment selectively. Therefore, reading of existing literature about Chinese legal system can lead to different understanding, the best of which might be well reached through a historical exploration of the developing process.

Comparative law usually makes efforts to reveal differences between legal systems. However, when discussing about Chinese legal

system, only fragmented information has constantly been provided. Particularly, the conventional (mis)understanding has been that Chinese legal system is closely following Confucian tradition (see for example de Cruz 1999, pp. 183-212), which spanned a period in excess of three thousand years, said to start around 1500 BCE during the Shang dynasty and ended in 1911 with the fall of the Qing dynasty (MacCormack 2015). On the other hand, contemporary Chinese law can roughly be attributable to socialist law. However, it has not always been talked about in the category of socialist law, which was used to denote the legal system in the former Soviet Union and countries of Eastern Europe.

The understanding of contemporary Chinese law as following Confucianism is completely a mistake, while excluding contemporary Chinese law from socialist law, another. There is a mission for this paper, through discussing historical transformation caused by several upheavals, to clarify the distance of contemporary Chinese legal system from Confucianism and at the same time to disclose how China borrowed the legal system from the former Soviet Union.

Looking at Chinese legal systems historically, the purpose of this article is to add knowledge to the research on characteristics of Chinese legal system, with particular regard to its contemporary situation on the foundation of historical development. Following this introduction, the article will sequentially go through how the Chinese legal system was historically shaped by such aspects as minority conquests and minority rule, missing of coherent protection of property right in Chinese legal history, three cultural catastrophes, the inconstancy of ideological framework in recent 70 years, the farraginous system, the unbalanced change of law, and the intertwining of the legal system with governance style in political domain, the article will be briefly concluded with characteristics of Chinese legal system from these aspects, the core of which is adventitious shock or destruction of traditional Chinese culture during frequent colonization by alien ethnic groups that were at the time economically and culturally unenlightened, or by alien ideological trend, in the case of communism, that was a sophisticated politico-legal inconstancy.

### **Minority conquests and minority rule prioritized and justified**

Usually, contemporary Chinese legal system has been categorized into a specially posed type, Chinese law, or socialist law. The former is based on historical perspective, while the latter, on political perspective. It is true that China reserves the socialist system after

the breakdown of their systems in the former Soviet Union and countries of Eastern Europe. Yet, as long as Chinese legal system is concerned, many will relate it to traditional Chinese culture, or classic Chinese philosophy, e.g. Confucianism. Such an understanding overlooked the fact that such a cultural traditional was not inconsistently maintained. Therefore, it is not accurate to attribute contemporary Chinese legal system to traditional Chinese culture, from which the law was supposedly originated but in reality not. We must look at to what extent the tradition is still followed and for what intent.

Since the birth of the first Chinese empire, Qin, in 221 B. C., China has long been a country under governance of ethnic majority. However, there were significant exceptions, among other things, in the Yuan Dynasty (1271-1368) when China was conquered by Mongols, and in the Qing Dynasty (1644-1911) when China was conquered by Manchurians. As happenings in all conquests of one ethnic group over another, these two dynasties were both characterized by continuous persecution of indigenous Chinese people; more than one hundred million of Chinese people were slaughtered during these two conquests. During these 363 years added up, China was in fact one of the world's biggest colonies in the history, when millions of Chinese people were massacred and majority of the population were ruled by far fewer ethnic minorities (concerning massacres by Mongols alone, see Fitzgerald 1938, p. 433; Roberts 1976, p. 299). In Yuan Dynasty, for example, people there were classified into 4 ranks (Four-Class System), i.e., Mongolian people, Semu people,<sup>1</sup> Han people (in the northern areas of China) and Southerners (people of the former Northern Song Dynasty (1127 - 1279), among which native Chinese people were only listed in third and fourth ranks according to the locations where they originally lived (Tu 1934). In the same dynasty, professions in the society were classified into ten ranks, nevertheless, unfortunately, Confucians were only ranked the ninth, between prostitutes and beggars.<sup>2</sup> From the standpoint of the conquerors, of course, they regarded themselves as elite class of the society, and the majority which were the native Chinese, were rendered the lower

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<sup>1</sup> In Yuan Dynasty, the Semu categories were those people who came from Central and West Asia. It was said that there were 31 types of Semu peoples (Tao 1958).

<sup>2</sup> For centuries, the mainstream theory claimed that Confucians were in low social status, worse than prostitutes. But some contemporary scholar suggested there were no such rankings in Yuan Dynasty (Fang 1996).

and ruled class. As Fairbank (1987, p. 18) remarked that: “The Mongols were too entirely different from the Chinese in thought and customs. They were true nomads of the open steppe, not suited to a settled bureaucratic-commercial existence.”

In such states, mainstream culture would surely be the culture of the ruling class, i.e. the traditional culture of the ethnic group where those minority elites were from. Confucianism had not been valued as much as in native Chinese dynasties during such conquests. Although Manchurians “were far superior in their institutions, strategy and understanding of how to govern China,” (Fairbank 1987, p. 18) in Qing Dynasty, Confucianism had not been developed due to persecution of intellectuals through the “literary inquisition”, by which intellectuals were imprisoned or more frequently killed because of misinterpretation of their writings. Confucians were more devoted themselves into research of Confucian classics but not innovative thinking (Yu 1998), the fact just repeated in the world history every now and then when there was no freedom of speech, scholars could only did research in historical issues but discussing about current affairs.

During these two dynasties, “China”, if there was still one, itself was weak, but as a large colony had been reserved as one of the biggest economies in the world at that time. Partly because Yuan and Qing were not so weak and poor, and partly because as a part of Yuan and a part of Qing, China was first destroyed and later reconstructed, Yuan and Qing were both regarded by today’s Chinese people as two legitimate stages of the whole history. Naturally, today’s mainstream political power in China seems to accept that conquests, slaughters and repression by both the Mongols and Manchurians as domestic contradictions. Genghis Khan,<sup>1</sup> Mongols’ leader, and Nurhaci,<sup>2</sup> Manchurians’ leader, have increasingly been regarded as heroic persons of ancient “China”. These are completely wrong, embarrassing and even ridiculous ideas, sometimes rejected, for example, by Mongolians in today’s Republic of Mongolia, but are prevailing in China. Even though there have been claims that the

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<sup>1</sup> Genghis Khan was the founder and Great Khan (emperor) of the Mongol Empire. He came to power by uniting many of the nomadic tribes of Northeast Asia. By the end of his life, the Mongol Empire occupied a substantial portion of Central Asia and China.

<sup>2</sup> Nurhaci was a Jurchen chieftain who rose to prominence in the late 16th century in Manchuria. His conquest of Ming China's northeastern Liaoning province laid the groundwork for the conquest of the rest of China by his descendants in 1644.

subsequent invasions of northern barbarians had never devastated or substantially reshaped their initial general instrument of government (Cunningham 1896, p. 47), even though such invasions might have been considered to be adapted to and assimilated by Chinese tradition, their influences and damages on Chinese society were unignorable.

Whatsoever, the results of such interruption of Confucian cultural tradition and political ecosystem, to a certain extent justified the rule by the minority elites, the rule by the aristocrats and the rule by the power of coercion. In fact, the old regime would finally reduce itself into a small network of "tax gathers, magistrates, and military" living a marginal life in the society (Fairbank 1987, p. 20). This did not change even when most of the world's major civilizations changed: democratic ideas did not prevail as the most Chinese people desired. The long-lasting system of the majority being governed by a small minority has been reserved even today (Fairbank 1987, p. 21). In such a society, the conception of the majority, the mass, or the people has always been the synonym of the weak, the poor, and the inferior, the legal protection of whom has always been tantalizingly out of reach. Law has always been the enemy of people, but not their friend. Therefore, people's obedience to law was based on the terror of the law, but not their reverence to the law.

In turn, law could only restrain the behaviour of those who were psychologically weak, but not the acts of those who dared to resist. As a result, regardless of good or bad laws, no one would follow it voluntarily. The reality has been more like such: law is used to punish those who commit harmful things, but not so much used to protect those who behave like gentlepersons. Punishment is more easily realized than protection. For example, there is not a lack of popular slogans such as "take law as a weapon",<sup>1</sup> "pick up the weapon of law",<sup>2</sup> etc. That's why the pursuance of a society governed by law

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<sup>1</sup> For example, slogans as "Using the law as a weapon to eradicate the ugly phenomenon of child trafficking", "Learning the law as a shield, using usage as a spear, and using legal weapons to protect the vulnerable groups", "Using the law as a weapon to protect the legitimate rights and interests of workers", "Using The law guarantees the openness and transparency of government procurement for weapons", "the use of law as a weapon to protect trademark exclusive rights according to law", etc., all include the term "take law as a weapon".

<sup>2</sup> For example, slogans as "Pick up legal weapons and fight bureaucracy to the end", "take up legal weapons to defend the privacy of artists", "maintain consumer rights and interests also need to take up legal weapons", "occupational disease rights

was such a hard journey for grassroots. That's also why penal system has historically more powerful and emphasized than social welfare system.

### **Property right not coherently protected**

Another significant phenomenon is that, history of China was characterised by frequent supersession of dynasties, each of which was ruled by one or more families. When one dynasty was superseded by another, there were always vehement violence, riots, sabotages, and vandals. Therefore, in Chinese history, it could be said that there were temporarily glorious and prosperous kingdoms one after another, but lacking of succession of wealth of one generation by another generation. Averagely, people were poor due to lack of safety. Elite classes merely existed among those groups close to the core of the political power, which was held by ancient political families. Right to property has never been really developed, respected and guaranteed in laws of any ancient Chinese dynasties. In addition, fair transaction in market economy has never been ensured.

The logic behind the politico-legal system has been that: people's properties are those of the state, which is rule by the elites as the ruling class; the properties of the state are those of the ruling class, which is assisted by their close political network. In turn, the ruling class is the driving force of the whole state, which is as an intermediary, the driving force of the whole people. Once the ruling families fell down, the country's social lives all changed: the officials would be persecuted by the emerging ruling class; the wealthy class would be looted by the more powerful new rulers; the grassroots would be displaced; while new officials and new wealthy class would substitute the old ones, without any reasoning according to law, but only from coercion of power. Coercion is the only source of political power and the only source of wealth. In fact, many revolutionaries and reforms in the history of China were a process of deprivation of property by military force or by political power.

According to the Chinese version of communist ideology in the 1940s and 1950s, all previous regimes, thought to be ruled by a so-called exploiting class, were unjustifiable. Contradictorily, this version of ideology justifies every violent revolution, overthrowing the regime that used to last hundreds of years. Once the same group

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protection must dare to take up legal weapons", etc., all include the term "pick up the weapon of law".

established a new regime, according to this ideology, it was inevitably an unjustifiable state ruled by the exploiting class. Mainstream Chinese history textbooks praise nearly every ancient riot of the ruled class against the ruling class, including seizing their property, depriving of their titles, and even eliminating them physically. By doing so, the overthrowing of the Nationalist government by the Communist Party, and thus confiscating landlords' and capitalists' property by emerging proletariat group without any compensation was justified.

Only in 2007, The Property Law of the People's Republic of China, adopted at the Fifth Session of the Tenth National People's Congress of the People's Republic of China on 17th of March, to protect the interest of private investors to the same extent as that of national interests, the first time in recent 70 years. Based on previous social background and legal effectiveness, such a law will not naturally be translated into proper practice in a short period. Uncertainties still exist in balancing private and public property rights by the ruling class, and sometimes, even by the local officers. Literal statements of a law alone cannot always lead to strict law enforcement, which is perplexed by complicated social context where no such practice existed before.

### **Three cultural catastrophes**

In a long history, China was more developed than places corresponding to today's Western countries. After China suffered from two large-scale and more small-scale socio-cultural catastrophes caused by conquests by outside ethnic groups, contemporary China is apparently lagging behind the Western world, even though some of the ranking scheme listed China among the best.

During Ming dynasty, China was both open and developed in commerce, which had an enhanced status in the whole economy. Taxation on commercial activities had become one of the important sources of state income, which would support the state defence and resist foreign invasion, for example, in north-east by Manchurians. Elements of early capitalism already emerged. The invasion of the Manchurians interrupted the process of capitalization and modernization. Qing dynasty adopted the close door policy and practised the literary inquisition or speech crime. Thousands of volumes of Chinese books were banned and burned by the Manchurians, and the rest books were artificially revised (Goodrich

1935; Kessler 1971). Under such circumstances, it was not possible for traditional Chinese culture to be widespread and developed.

An assumption can suggest that, without these interruptions of cultural tradition, today's China should be more developed in both socio-economic and politico-legal systems. Naturally, writers in contemporary Chinese politics and law must mention the influence of Marxism and its Chinese subspecies. The embrace of Marxism in last century is tantamount to the third conquest equivalent to those by Mongols and Manchurians. While the Mongols and the Manchurians finally somewhat accepted Confucianism, or at least admitted the existence of Confucianism in mostly Chinese populated regions, Marxism is critical of most elements of Confucianism and also completely stopped its development. Marxism is the basis of the ruling ideology, but Confucianism is one of the objects for criticism.

How Marxism transformed traditional Chinese culture was the primary function of the Anti-Rightist struggle of 1957, and the Great Proletarian Cultural Revolution during 1966-1976, during which two generations and several millions of "intellectuals" were forcibly reformed in prisons or semi-prisons. The then Chinese "intellectuals" could be defined as those who were literate, whether willing to or somewhat unwilling to change their mind to accept a set of new ideological ideas. Everyone had to change spiritually to learn and to worship Marxism in reverence and deference, or else physically to die or at least to be imprisoned.

A positive development was that those movements were negated by the Party afterwards, partly and limitedly, but not thoroughly, because thorough repudiation of these movements means several decades of missing of the Party's legitimate history. In order to maintain the legitimacy of the Party, these movements were only attributed to mistakes of certain Party members, including previous top leaders, for example, mistake of late-year Mao was blamed for the Great Cultural Revolution (the Sixth Plenary Session of the Eleventh Central Committee of the CPC 1981). Today, these were in large measure taboos not touched by politicians, no sorry at all. Therefore, if you ask where the traditional Chinese culture was, the answer would be that the Party would not be blamed for, but that the culture mysteriously deteriorated. Freedom of speech is limited to eulogise the Party, but it is restrained when criticising the policy.

An optimistic view maintained that, even if the country has undergone repeated upheavals in several centuries, in addition to more than twenty times of changes of dynasties, China has never changed her form of government (Cunningham 1896, p. 79). It is true

that China has survived many interruptions of the tradition, nevertheless, China could be seen as developing in an “unbroken continuity” (ibid., p. 79) by overlooking those small windows of the history. If this is the case, future China may still recover more or less from recent cultural catastrophes and continue more or less Confucian system, possibly through a top-down initiative.

### **The “mightiness” of the communism**

The practise of Marxism in China resulted in a creation of the Communist regime, which was realized through violent revolutionary. Frequent “revolutionary” movements, back and forth, were used to thoroughly change the old social order. In 1947, when the Communist Party of China passed the “Outline of Land Law”, announced that all landlords’ ownership of land should be abolished (Article 2). Landlords’ livestock, farm tools, housing, food and other property were also confiscated (Article 8). The central government of the People's Republic of China published a Land Reform Law on June 30, 1950. The law abrogated ownership of land by landlords and introduced peasant landownership. Land was confiscated from former landlords and redistributed to landless peasants and owners of small plots, as well as to the landlords themselves, who now had to cultivate the land to earn a living.

Furthermore, the Administration Council of China (later State Council) passed the Decision on Division of Rural Class Components in 1950, and subsequently, people in rural areas were divided into five different components: landlords, rich peasants, middle peasants, poor peasants, and workers. According to the target set by Mao Zedong, the leader of the Communist Party of China, in 1948, landlords, that is, ten percent of rural population should be hit hard (Mao, 1948). It means that millions of people were eliminated physically. The figure ranged from one million to twenty million according to different literature. An exact figure is not available, and inaccuracy of such estimation does not matter much if we are not writing a historical book. But the organized violence by the name of the revolutionary destroyed a long developed social order after many tribulations.

Private property has nearly completely been deprived of by 1960s in the name of nationalization and collectivization. Then the state-owned and collective-owned property was allocated to another benefit group through privatization, shareholding system reform, and so on. China has for decades pursuing a status of market economy managed by the world’s wealthiest class in the name of the world’s

biggest ruling party. The party's dominance in Chinese politics and law is another characteristic of Chinese legal system. Therefore, all powers of the state come from the people, but people can only be represented by the Party.

From time to time, laws and regulations in China would express and emphasize the importance of the Party. In 107 articles of the 1995 Labour Law of the People's Republic of China, the term "Gongchandang" (the Communist Party of China) is not mentioned, while the term "Gonghui" (trade union) was mentioned 14 times in eight articles. In 2001 Trade Union Law of the People's Republic of China, Article 4 stipulated that trade union "shall support the leadership of the Communist Party of China." This is the only clause in this law to mention the Party. In 2013 Constitution of the Chinese Trade Unions, the term "Dang" (Party) was mentioned seven times. In law, the Chinese trade unions are under the leadership of the Communist Party of China, serving as a bridge and link between the Party and workers (General Principles of Trade Union Law), and shall adhere to the Party's basic line (Article 31). As a result of these provisions, it is impossible to separate trade unions from the Party. The trade unions are potentially representative of the Party in enterprises. This makes a great difference from a trade union in capitalist countries.

### **A farraginous legal system**

As it was well accepted that, In the 1950s and 1960s, the primary tasks of the legal scholars were to translate theory of the former Soviet Union. In 1970s and 1980s when China recovered legal science, theory of the former Soviet Union was still imitated by Chinese scholars (He 2002, p. 187).

On February 22, 1949, Chinese Communist Party Central Committee decided to abolish Six Codes of the nationalist regime (Chinese Communist Party Central Committee 1949). Following the foundation of the new regime in 1949, closely mimicking the model of the former Soviet Union, a new Chinese legal system took shape soon. However, after a short period, even such a system was trashed when the police, court and procuratorate were all "smashed" (Zimmerman 2014, pp. 51-43). During the Great Proletarian Cultural Revolution, the Revolutionary Committee was stipulated as the executive in 1975 and 1978 constitution (1975 Constitution, Articles 22-23; 1978 Constitution, Articles 34-37). However, the Revolutionary Committee alone was the de facto legislature, executive, and judiciary. In addition, in 1975 Constitution, basic "rights and obligations" of

Chinese citizens are “to support the leadership of the Chinese Communist Party and the socialist system, and to obey the Constitution and law of the People's Republic of China.” (1975 Constitution, Article 26) In these two 1970s’ constitutions, the Chinese Communist Party was clearly stipulated as the core of leadership of people of whole China (both in Articles 2). In fact, although the 1982 current Constitution removed such clauses, the Chinese Communist Party is still the core of leadership, and it is the obligation of people of the whole China to support the Party.

Around 1978, re-establishment of a judicial system was launched by new political leaders. But the first efforts were to re-use the former Soviet Union’s old and new laws, change and even challenge of which were allowed. As a result of these efforts, the initial framework of the contemporary Chinese legal system was formed. Accordingly, the inherent structure of this system was that of the Soviet Union. Borrowing from the then communist counterparts was thought to be safe from Westernization or capitalization, and thus safe from internal criticism. The earliest laws of China passed in the 1970s and 1980s were full of silhouettes of that of the Soviet Union, partly because many of the authoritative jurists were those who studied in the Soviet Union, or those who studied in Chinese universities where the Soviet teachers taught laws, or those who learned Russian language and could understand the Soviet legal literature.

Since 1980s, Chinese innovation and borrowing from the Western countries also took place due to the imperative demand brought about by the economic development. Learning from the Western legal systems has been a fashionable practise among jurists. Western and comparative law courses were increasingly taught at many universities. Many new laws promulgated in 1990s and 2000s modelled those of Western countries, with adjustment according to the situation of China. However, these were restrictively limited to economic sphere. That’s why today’s Chinese legal system became a blended entity of the Soviet, the Chinese Communist and the Chinese traditional, and the Western elements.

Many people are curious about such a statement, but if looking at the current Companies Law of 2005, it is easy to understand what the farraginous system means. Among others, the law included special provisions on wholly stated-owned companies (Companies Law Articles 65-71), number and scale of which are incomparable all over the world economies. Particularly, in all companies, in Article 19 of this law stipulated that, “Communist Party organizations shall, in accordance with the provisions of the Constitution of the Communist

Party of China, be set up to carry out activities of the Party. Companies shall stipulate the necessary conditions for the Party organizations to carry out their activities.”

### **Unbalanced development of law**

Because the Communist Party initially discourage people from acquiring and holding any property, from foodstuff, money to productive tools, the ownership of which was in itself regarded as guilty. There was no criminal law, but those people were criminally punished with penalties ranging from imprisonment to death. According to the 1975 and 1978 Constitutions, the state deprives the landlords, rich peasants, reactionary capitalists and other bad elements of political rights according to law, and at the same time provides them with the opportunity to earn a living so that they may be reformed through labour and become law-abiding citizens supporting themselves by their own labour (Article 14 of 1975 Constitution; Article 18 of 1978 Constitution. The texts were slightly different). These were the last laws that publicly discriminated, repressed and continuously persecuted those who owned enterprises or property before the Communist Party reigned over China.

Beginning with the 1982 version of the Constitution, those who acquired property through their labour, work, and business were gradually protected and respected. The constitution and the political system were to some extent touched by the development of the legal system. Until today, there has already a U-turn in the constitutional rights of and ideological attitude towards asset-owner: to get richer is honourable. In a word, those who were rich before 1949 or who got rich before 1978 were most possibly regarded as criminals and punished, while those who got rich after 1978 would be regarded as legal and protected. Such a legal framework might be understood with reference to those radical changes of Chinese legal system in 1949 and 1978. In fact, in the first case of the reform, there emerged the urgent demand for lawyers to deal with contracts and litigation of commercial disputes between counterparts of foreign trade and joint ventures (Fairbank 1987, p. 355). It is not strange that there would be an effort to seek a modern legal system from scratch (ibid.).

The transformation of Chinese economy from a nearly closed system to a significant market status can be considered a success (Shirk 1994, p. 1). However, compared with those laws regulating economic activities, far less change was introduced to the reform of the constitution and the political system, it was regarded as a process of

“economic reform without political reform” (ibid., pp. 1-11). “A system with Chinese characteristics” can exactly mean capitalism in economy, but communism in politics. The process of capitalization subtly smuggled the wealth of the whole country to those who were politically powerful, while the continuation of the communist ideal played down any challenge to the existing benefit group. In 2007, when most of the families from the benefit group shared the country’s wealth, they lost no time to pass a property law, designed to protect private property.<sup>1</sup> Consequently, we can conclude that there exists adroit mystery machinery in contemporary Chinese legal system to facilitate flexibility or fixity. We can admit that, this might not be the carefully planned process, but if the 70-year history could be condensed in one page, it can be read as such.

### **Intertwining of law and politics**

One more feature of Chinese legal system is that it has closely been intertwined with governance styles of political leaders. In fact, there is no clear answer to the question when asking about whether the system can be attributed to rule of law or rule of man. Officially, rule of law is labelled, but rule of man is not prohibited, particularly at the highest layer of the bureaucracy. In China, international law can have its market when and only when the leaders will play tricks with other countries, for example, with the former Soviet Union in the 1960s and with Vietnam in the 1980s. Even then, international law was less mentioned than international politics.

In many other cases, China dealt with foreign diplomacy based on usual practice as that in dealing with private relationship, lack of using the principles of modern international law. It is understandable that in the beginning of the communist regime, there were few international law experts. But it is hardly understandable that even today, Chinese diplomacy seems to be more emotional than reasonable. Naturally, this is also an integrated part of the Chinese politics, which shall be maintained by what the ruling party thinks to be the best choices. Such an attitude toward international law is one of the best choices. Hence there is an underdeveloped international law, or an underdeveloped use of international law. Nevertheless we can see that such a situation is being slightly changed.

After these examples, if we array critical elements in Chinese legal system, we can begin from the rule of law. Private law gives place to

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<sup>1</sup> Property Law of the P. R. China, adopted at the 5th session of the Tenth National People’s Congress on March 16, 2007, came into effect on October 1, 2007.

public law; public law gives place to politics; politics gives place to the Party's policy; and the Party's policy gives way to leader-will. It is not directly evaluable which is better, the rule of law or rule of man, either in China or elsewhere. However, Chinese legal system is, after all, deeply interwoven with politics, particularly, the governance styles of political leaders, whose charisma is playing a critical role in the development of the legal system. As Fairbank pointed out that it was difficult to observe a "supremacy of law" in China, due to the reason that the Party held the top leadership and its policies would be changed according to the Party's will (Fairbank 1987, p. 356). Inevitably, law and policy were usually coincident, while breach of the policy was unlawful (ibid.).

During the past forty years, contemporary leaders create or meet one of the best historical opportunities when China enjoys a long-term development, without great political upheavals. Many political and legal problems have been solved with ease, and a systematic legal framework has also been taking a shape. Current judicial system is one of the most urgent issues being addressed simply because abuse and corruption will erode any robust and transparent legal structure, which is the foundation of just and stable politics.

An anti-corruption campaign has been launched by decision of the 18th National Congress of the Communist Party of China held in November 2012. In 2015 alone, discipline inspection organs in China accepted 2,813,000 letters and visits, disposed 534,000 leads, filed 330,000 cases, closed 317,000 cases, imposed party and government disciplinary penalty on 336,000 persons, and suspected of crimes and transferred to prosecuting authorities 140,000 persons. Nationwide procuratorial organs investigated cases of corruption, bribery, malfeasance and other professional crimes 54,000 people. The national court system concluded 16,000 first instance cases of corruption and bribery, more than 4,300 cases of malfeasance. The administrative supervisory authority dealt with 1,046 people for omission and arbitrary administrative conducts; held 26,000 persons responsible for dereliction of duty. (Wang 2016).

An unprecedented panorama is taking its shape in changing the falling tendency of people's confidence in legal system for a long run. What characterized such a campaign is that it is widely believed that it is motorized under the combination of current leadership of Xi

Jinping,<sup>1</sup> the leader of the Party and Wang Qishan,<sup>2</sup> the leader of the discipline inspection committee. Their charisma is believed to play most important role in the movement. It is natural to pose the question whether the fight against corruption will be sustainable.

## **Conclusions**

In a word, history made the Chinese legal system unique. In the last century, Communist Party launched one of the three full-scale conquests of China by external power or ideology and interruption of traditional Chinese culture regarded as decadent. The most significant result of such conquests has been the justification of rule by minority over majority, whose obedience to law was based on the enforceability of the law but not voluntariness. Chinese history also witnessed frequent supersession of dynasties, each of which was ruled by one or more families, who exercised full control of the political, legal and economic powers. Many revolutionaries and reforms were a process of deprivation of property by military force or by political power. Because of latest conquests of external ethnic groups, present China is still lagging behind the developed Western world, particularly in the sense of the legal system.

In addition, Marxism resolutely, cleanly, and thoroughly swept many of the so-called decadent elements of Chinese culture. With the party's dominance in Chinese politics and law, contemporary Chinese legal system became a blended entity of different elements: the Soviet, the Chinese Communist and the Chinese traditional, and the Western. Compared with those laws regulating economic activities, far less change was introduced to the reform of the constitution and the political system. Furthermore, Chinese legal system has been snugly influenced by the governance style of political leaders.

It must be noted that regularities can hardly be found and followed in Chinese legal system during past decades, just the same as the regime's historical development. There do no exist answers to such questions as "What has been done?" "What shall or what should be

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<sup>1</sup> Xi Jinping has been the General Secretary of the Communist Party of China, the President of the People's Republic of China, and the Chairman of the Central Military Commission since 2012.

<sup>2</sup> Wang Qishan is a senior leader of the Communist Party of China, serving as Secretary of the Central Commission for Discipline Inspection. He has emerged as the public face of General Secretary Xi Jinping's anti-corruption campaign since 2013.

done?” or “What will be the future?” The Party, with some more tactics and strategies of reform, is expected to rule the country for longer time, during which the legal system is to be updated and upgraded.

When talking about fundamental features of contemporary Chinese legal system from an open standpoint, historical artefacts had to be accepted as they were, and the ruling Party as well. Only under such circumstances, a clear Chinese legal system can be understood as that of a blended system.

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