

SOCIALIST LEGAL THEORY IN DENG XIAOPING'S CHINA

CARLOS WING-HUNG LO*

I. INTRODUCTION

After assuming supreme power in the People's Republic of China in late 1978, Deng Xiaoping was most insistent that law was essential to socialist modernization and that Maoist legal nihilism had to be combated. He inaugurated a massive program to reform and restructure the legal system. Accordingly, the Party and State Constitutions were revised, law was codified, judicial organs were reorganized and the academic discipline of legal studies was revived. The aim was to replace what was referred to as the 'rule of persons' by the rule of law. By the time of his death in early 1997, much had been achieved. Though defects in the system remain and have been highlighted by many scholars, it is fair to say that China's socialist legal system has gone far beyond the old instrumental notion of safeguarding the rule of a Marxist Party. In the context of promoting economic modernization, law has increasingly been seen as the principal means for resolving conflict and maintaining social order. While many scholars have noted Deng's limited success in instituting the rule of law,¹ one must concede that China is no longer faced with the legal nihilism of the Maoist era.

* Carlos Wing-Hung Lo is Associate Professor in the Department of Management at the Hong Kong Polytechnic University, the author of *China's Legal Awakening: Legal Theory and Criminal Justice in Deng's Era*, and the Chief Editor of the *Asian Journal of Business & Information Systems*. The author would like to thank Mr. Robert Phay, the former Editor-in-Chief of this Journal, for reading and commenting upon earlier drafts and Prof. Bill Brugger for his generous help in revising this paper.

1. As most Sinologists and foreign jurists see it, Deng's contribution to China's legal system is still limited, since the Chinese legal system has still failed to satisfy the rule of law. See generally John Copeland Nagle, *The Rule of Law in Mainland China*, 2 AMERICAN ASIAN REV. 157 (1996); Donald C. Clarke & James Feinerman, *Antagonistic Contradictions: Criminal Law and Human Rights*, 141 CHINA QUARTERLY 135 (1995); Robin Munro, *Rough Justice in Beijing, Punishing the "Black Hands" of Tiananmen Square*, 1 UCLA PACIFIC BASIN L. J. 77 (1991); Carlos W. H. Lo, *Criminal Justice Reform in Post-Crisis China: A Human Rights Perspective*, 27 HONG KONG L. J. 90 (1997).

But what sort of law are we talking about? This article argues that legal reform in China has to be seen within the context of a specific tradition of socialist law, developed originally in the Soviet Union. Of course, in many ways Deng moved away from a "Soviet model". He insisted that socialism (and almost everything else) had to be built with "Chinese characteristics". That did not mean that the Soviet-inspired socialist legal framework was to be abandoned. Its "socialist" content, however, had to be adapted to the thesis that China was in "the preliminary stage of socialism". That "preliminary stage" was to allow for a substantial commodity economy and an open-door economic policy. The market economy, justified by that formula, demanded forms of legal regulation unknown in the old planned and closed economy in which public ownership dominated. The Chinese approach has been very inventive.

Before we consider that inventive approach, let us consider the broad contours of the tradition of "socialist law". The "socialist theory of law" owes its origin to Vyshinsky, following Stalin's rejection of the notion that law and socialism were incompatible,² which had been articulated in the "commodity exchange school" represented by Pashukanis.³ The socialist theory was strictly formulated to legitimate law in the socialist regime by bending elements of Marxist critical theory to serve an ideological purpose. It affirmed the positive value of law in "socialist transition" with the focus on differentiating socialist law from "bourgeois" law. Socialist law was seen not as a further development of bourgeois law, but as a new

2. See J.V. Stalin, *Report to the XVIII Party Congress*, in *SOVIET LEGAL PHILOSOPHY* 347 (Hugh W. Babb trans., Harvard Univ. Press 1951).

3. Before completely subjugating law to politics in the 1930s, Soviet theorists had attempted to develop what they considered to be "Marxist" law into a coherent *critical* theory. The views put forward were Marxist in the sense that they conformed to Marx's "base" and "superstructure" metaphor, his discussions on the relationship of law and ideology and his stress on the class character of law. At first theorists argued that law and socialism were incompatible. Such a thesis underpinned the critical theories of Stuchka, Reisner and Pashukanis, the most celebrated jurists of the time. Their point of view that "law was a bourgeois category that regulated relationships between isolated individuals in the process of commodity exchange" later became known as the "commodity exchange theory". Taking an economic reductionist position, such theorists argued that, since a commodity economy was the essential material condition for law, law would cease to exist as that commodity economy withered away. Since law was class-bound and conflict-ridden, Marxist theory precluded any idea of "socialist" (or proletarian) law. Meanwhile, law in the transition period, while a commodity economy still existed, was only a continuation of "bourgeois law". Above all, their obsession with "legal fetishism" prevented them from thinking about the necessity of law in a post-capitalist society. See generally P.I. Stuchka, *The Revolutionary Part Played by Law and State - A General Doctrine of Law*, in *SOVIET LEGAL PHILOSOPHY*, *supra* note 2, at 40; M.A. Reisner, *Law, Our Law, Foreign Law, General Law*, in *SOVIET LEGAL PHILOSOPHY*, *supra* note 2, at 71-109; E.B. Pashukanis, *LAW AND MARXISM: A GENERAL THEORY* (1981).

type of law which had grown out of the socialist revolution of the proletariat.⁴

The socialist theory was formulated on the basis of Stalin's instrumental approach. Law in socialist society was held to be the instrument of the state for the elimination of all capitalist residues, for the defense and the development of the socialist economy, and ultimately for the realization of communism.⁵ Vyshinsky's theory held that socialist legal theory should specify the tasks and social functions of socialist law, its nature, its content and form as well as the condition for its withering away.⁶ As for a general theory, it should cover the origins, development and the future of law in human societies. Within that model, Soviet jurists wrestled with the nature of law and its origins, the proper relationship between law and the economic base and the methodology of Marxist jurisprudence.⁷

The socialist theory was Marxist in the sense that it stressed the indissoluble link between the state and law, both historically and functionally. Law was conditioned by the state and had to be defined by reference to the state. It took on a political complexion; and legal theorists always had to refer to political theory, or more particularly to ideology. Socialist theory, therefore, was positivistic, seeing law as being laid down by the state and geared to serve the interests of the state until communism saw the state transcended. Its uniqueness, as summed up by Tay and Kamenka, lay in the "extra-legal presupposition about the nature and the function of law in the economic context, and in the rejection of law as independent of the state in practice".⁸

Has the wide adoption of market-oriented legislation based on Western models, particularly for the purpose of developing a "socialist market economy" under Jiang Zemin's leadership, made the socialist

4. S. A. Golunsky and M. S. Strogovich, *The Theory of the State and Law*, in *SOVIET LEGAL PHILOSOPHY*, *supra* note 2, at 386.

5. See A. Y. Vyshinsky, *The Fundamental Tasks of the Science of Soviet Socialist Law*, in *SOVIET LEGAL PHILOSOPHY*, *supra* note 2, at 308-9.

6. See A. Y. Vyshinsky, *THE LAW OF THE SOVIET STATE* 49-52 (1948).

7. See generally L. S. Jawitsch, *THE GENERAL THEORY OF LAW* 1-163 (1931). For discussion of the Soviet debate, see Sun Guohua, *Yijiao zhe xuyan [Foreword by the Translator and Proof-reader]*, in *FA DE YIBAN LILUN [THE GENERAL THEORY OF LAW]* 1-10 (Zhu Jingwen trans., Liaoning Renmin Chubanshe 1986).

8. A. Erh-Soon Tay & E. Kamenka, *Marxism, Socialism and the Theory of Law*, 28 *COLUM. J. TRANSNAT'L L.* 244 n. 23 (1985). Such a conclusion is drawn mainly from the studies of Hazard on Soviet law. See generally J. HAZARD, *COMMUNISTS AND THEIR LAW: A SEARCH FOR A COMMON CORE OF THE LEGAL SYSTEM OF THE MARXIAN SOCIALIST STATES* (1961) and *MANAGING CHANGE IN THE USSR: THE POLITICO-LEGAL ROLE OF THE SOVIET JURIST* (1983).

perspective obsolete? It seems both rash and simplistic to conclude that such a move has fundamentally changed the philosophical basis of the Chinese legal system. Western observers who have stopped paying attention to the continuing influence of the "socialist theory of law", simply because the Soviet Union has collapsed, may not be seeing the entire picture of legal reform in China. When considering China, one cannot overstate the ideological significance of the non-state sector. Nor should one overlook the fact that a definition of "socialist market economy" is still bent in the direction of the old statist teleology. As Gelatt notes, foreign legal concepts and traditions have been adapted within a broader framework of Marxian rule and have been accommodated to the basic principles of socialism. "The PRC leadership has never indicated an intention to use law in a way that would alter China's political or ideological foundations or 'basis'".⁹ One should note, moreover, that while some law (criminal and administrative) enjoys a little autonomy from politics, economic law is much less autonomous and is not regarded as "mainstream". That will surely continue to be the case so long as the importance of public ownership retains its ideological dominance.

The tradition of "socialist law", therefore, remains important, and we must be careful not to negate Chinese socialist law in the name of Western legal theory, as warned by Lubman in reviewing the study of Chinese law in the United States: "[b]oth extreme cultural relativism and insistence on intellectual categories derived from Western legal systems have threatened to skew study (of Chinese legal system), with the latter trend more evident in recent years".¹⁰

This article discusses the evolution of socialist legal theory in China and in particular the changes resulting from Deng Xiaoping's reforms. While the old framework of socialist law remains, law has developed beyond crude Soviet instrumentalism. The subtlety of law's regulative function is now appreciated, and the way is open for seeing the relationship between the rule of law and democracy. This article will contrast Deng's approach to law with that of Mao Zedong. It will consider whether Deng laid down the basis for a uniquely Chinese legal theory in the context of Marxist jurisprudence. Finally, it will explore the future of Chinese socialist law under the leadership of Jiang Zemin.

9. See Timothy Gelatt, *Law Reform in the PRC after June 4*, 3 J. CHINESE L. 318 (1989).

10. Stanley Lubman, *Studying Contemporary Chinese Law: Limits, Possibilities and Strategy*, 39 AM. J. COMP. L. 294, 326(1991).

II. SOCIALIST LAW IN CHINA

A. Mao's View

We have noted that the Chinese legal system, though deeply influenced by the former Soviet Union,¹¹ was by no means a slave to Soviet formulae. The Chinese Communist Party was relatively free in formulating its own theory of law within the framework of Marxism-Leninism.¹² Mao, in fact, constantly challenged the positivistic notion of law inherited from the Soviet Union. By the mid-1950s, he had refused to conceal his dislike of the formal Soviet legal system; and that, amongst other things, informed the Sino-Soviet ideological split. Mao's hostility to formal law derived from his "philosophy of struggle", deeply affected by Marx's and Lenin's revolutionary theory:

The state apparatus, including the army, the police, and the courts, is the instrument by which one class oppresses another. It is an instrument for the oppression of antagonistic classes; it is violence and not "benevolence".¹³

For Mao, law acted to restrict class struggle and a formal legal system could not adapt to rapidly changing revolutionary conditions. Thus, Mao persistently opposed the introduction of a purely legal order. From his class perspective, proletarian justice in socialist society demanded rejecting "bourgeois right", expressed in the principle of "all being equal before the law".¹⁴ Mao's conception of law subsumed legal order and justice under a

11. See Richard Baum, *Modernization and Legal Reform in Post-Mao China: The Rebirth of Socialist Legality*, 2 STUDIES IN COMP. COMMUNISM 76, 76-77 (1986).

12. See JEROME COHEN, *THE CRIMINAL PROCESS IN THE PEOPLE'S REPUBLIC OF CHINA, 1949-63: AN INTRODUCTION* 71 (1968); see also Victor H. Li, *The Evolution and Development of the Chinese Legal System*, in CHINA: MANAGEMENT OF A REVOLUTIONARY SOCIETY 255 (John M. H. Lindbeck ed., George Allen and Unwin Ltd. 1972).

13. Mao Zedong, *On People's Democratic Dictatorship*, in 4 SELECTED WORKS OF MAO TSE-TUNG 418 (1977).

14. The rationale for class justice is enshrined in Article 43 of the "Statute of the Chinese Soviet Republic Governing the Punishment of Counter-revolutionaries" (1934) which provided lighter penalties for crimes committed by workers and peasants. The provision reads: "workers and peasants who commit an offence but are not leaders or major offenders may have their punishment reduced from that stipulated in the various articles of this statute regarding elements from the landlords and bourgeoisie who commit the same class of offence." Quoted in CARLOS W. H. LO, *The Legal System and Criminal Responsibility of Intellectuals in the People's Republic of China, 1949-82*, 2 OCCASIONAL PAPERS/REPRINTS SERIES IN CONTEMPORARY ASIAN STUDIES, No. 83 (1985). This tradition of "proletarian justice" continued in the principle of the "dictatorship of the proletariat" and later more explicitly in Mao's distinction between two categories of contradiction after the communist regime was established in 1949. See Mao Zedong, *On the Correct Handling of Contradictions Among the People*, 5 SELECTED WORKS OF MAO TSE-TUNG 384-421 (1977). For a discussion on justice under Mao, see Lo, *The Legal System and Criminal Responsibility of*

broader framework of politics and ideology: law was simply an instrument to be wielded by the Party in fostering class struggle and socialist transition.

Law, defined as an instrument of class struggle, was to be implemented not so much by formal judicial organs as by mass participation in political campaigns and mass movements.¹⁵ Mao put strong emphasis on its educational function in inculcating the masses with communist ethics.¹⁶ Of course, Soviet law did that too,¹⁷ but Mao's emphases were different. Mao's ideal (communist) society was based on his particular vision of communist ethics which had to be achieved here and now and could not be postponed until a communist society rendered law unnecessary.¹⁸ As communist ethics developed, law lost its authority. And that was nowhere more the case than when Mao's frustration with the slowness of the Soviet model led to his ideas on "uninterrupted revolution" in 1957. The result was the Anti-rightist Movement and the Great Leap Forward where "politics took command" and the value of law was negated. Eventually Mao declared that law was useless.¹⁹

B. *Conceptions of Law under Deng Xiaoping*

Unlike that of Mao, Deng Xiaoping's approach towards law was pragmatic. Drawn largely from his bitter political experiences, Deng's conception of law was geared to practical goals. After resuming leadership in late 1978, Deng developed policies geared to rebuilding and strengthening the Chinese legal system. As we have noted, he saw law as necessary to maintain social order for socialist modernization. Putting forward the slogan "develop Marxist ideology under the new historical

Intellectuals, *op. cit.*, at 83-84.

15. See generally JAMES P. BRADY, *JUSTICE AND POLITICS IN PEOPLE'S CHINA: LEGAL ORDER OR CONTINUING REVOLUTION?* (1982).

16. For discussion of the educational function of law in Mao's conception of the legal system, see LO, *supra* note 14, at 6-10.

17. The educational function of Soviet law was stressed by Vyshinsky, Golunsky, Strogovich and Chkhikvadze. See generally Vyshinsky, *supra* note 5; Golunsky and Strogovich, *supra* note 4; Article 3 of the "Law Concerning the Judicial System of the U.S.S.R. and the Union and Autonomous Republics" (1938) prescribes that "the court in all its activities is educating Soviet citizens in a spirit of devotion to their fatherland and to the cause of socialism; it is unswervingly precise in carrying out Soviet laws- care for socialist property, labor discipline, an honorable attitude towards the state and social duty, and respect for the rules of all socialist life.") from D. A. Funk, *Lesson of Soviet Jurisprudence: Law for Social Change Versus Individual Rights*, 7 *IND. L. REV.* 466 (1974) (quote amended for stylistic reasons). For detailed discussion, see *id.* at 466-72.

18. For a clearer picture of Mao's vision of the ideal society, see LO, *supra* note 14, at 24. See also BRADY, *supra* note 15.

19. SHAO-CHUAN LENG AND HUNGDAH CHIU, *CRIMINAL JUSTICE IN POST-MAO CHINA: ANALYSIS AND DOCUMENTS* 16-17 (State University of New York Press 1985)

conditions of China",²⁰ Deng did not return to all features of the Soviet model but insisted on searching for a "Chinese" path to the development of a socialist legal theory. His aim was to free China from the constraints of both Soviet ideas and Mao's theory of the state and law but he retained some basic features of the old socialist ideology. His insistence in 1979 on the "four cardinal principles" - the socialist road, the dictatorship of the proletariat, the leadership of the Party, and Marxism-Leninism and Mao Zedong Thought - makes that clear.

Deng's approach was incremental. While proclaiming unswerving adherence to his "four cardinal principles", he nevertheless affirmed the fundamental role of legal institutions in socialist society. But Deng did not see that approach as contradictory. Here he distinguished between ideology and political practice. Ideology was the source of the Communist Party's legitimacy to rule. The "four cardinal principles" were the foundation of that ideology. In practice, however, they should not be seen as extra-legal and should appear in legal form if they were to be accorded supreme authority. Deng had no doubt "law was the highest authority".²¹

As Deng saw it, if one was single-mindedly to pursue the goal of socialist modernization, what had become known as the "rule of persons" had to be replaced by the "rule of law". Here Deng's position was clear-cut. He bluntly opposed the "rule of persons": "Very often, what leaders say is taken to be the law and anyone who disagrees is called a law-breaker. Such law changes whenever a leader's views change".²² That approach should be eradicated!

Deng's pragmatic leadership style resulted in action-driven legal principles, not just ideological maxims. Insisting on the slogan "there must be laws for people to follow", Deng demanded the completion of legal codes. His second slogan was that "those laws must be observed". Third, he demanded that "law breakers must be dealt with accordingly", and fourth that "law enforcement must be strict". Finally, he maintained that all were "equal before the law".²³ Those practical principles provided workable, simple and straightforward guidelines for legal reform. Of the five principles, Deng was particularly concerned with those dealing with the observance and implementation of law. The criteria for evaluating law and the legal system were its ability to improve people's material life, to

20. See e.g., Deng Xiaoping, *Opening Speech*, in THE TWELFTH NATIONAL CONGRESS OF THE C.C.P. 3 (Foreign Languages Press 1982).

21. Deng Xiaoping, *Implement the Policy of Readjustment, Ensure Stability and Unity*, 25 December 1980, in SELECTED WORKS OF DENG XIAOPING (1975-1982) 339 (Foreign Languages Press, 1984).

22. Deng Xiaoping, *Emancipate the Mind; Seek Truth from Facts and Unite as One in Looking to the Future*, 13 December 1978, in SELECTED WORKS OF DENG XIAOPING (1975-1982), *supra* note 21, at 157-58.

23. See Carlos W. H. Lo, *Deng Xiaoping's Ideas on Law: China on the Threshold of a Legal Order*, ASIAN SURV., July 1992, at 649-65.

foster "spiritual civilization" in the socio-cultural area and to promote democracy in the political realm.²⁴ Yet, in the absence of a coherent theoretical formulation, Deng's random views could be bent in the direction of expediency, especially when one came to consider the relationship of the Party to the law and the relation of law to democracy.

For Deng, it was best that the development of the legal system and democracy proceed gradually in a manner corresponding to economic progress. Although believing that Party interventions in that process should be minimized, Deng regarded some degree of Party direction and supervision as essential if chaos was to be prevented. The denunciation of the "rule of persons" was intended to remind Party cadres to exercise their leadership role within the boundaries permitted by law. Even class struggle (so much as it still existed) had to be geared to legal order and to be handled by the legal system. Above all, the core of Deng's legal ideas rested on his practical principles which were taken as legal maxims by the regime. His vision of Chinese society was legally-regulated, with socialist democracy as the political foundation. Yet Deng acknowledged that it would take a long time to achieve that goal. To make the legal order work, Deng saw it as vital to raise the level of the nation's legal consciousness. Education was the appropriate means to produce a large pool of qualified legal professionals to operate the legal order. In short, "political stability and social unity" should be the over-riding concern within the overall policy of "promoting democracy and strengthening the legal system".

III. TOWARD A CHINESE SOCIALIST THEORY OF LAW

The above approach was eclectic. It was clear enough that Deng did not have, and never had, a coherent theory of law; he merely had some preliminary ideas on the orientation of law when he put forward the legal reform proposals after the Third Plenum in 1978. And yet his ideas on law had unparalleled significance in Chinese history due to the fact that he provided a leadership which understood the positive value of law and which brought to an end the legal nihilism enshrined in Mao's legal thought. His conception of law had gone beyond the narrow Soviet instrumentalist justification of Party rule and had advanced towards a basis for criticizing arbitrariness. He had come to realize that the repressive function of law should be seen in terms of a notion of public order much deeper than simply eliminating enemies of the revolution. Deng believed that legal regulation was important to socialist modernization and opening up China to the rest of the world. However imperfectly, Deng's view of law

24. Deng Xiaoping, *On the Reform of the System of Party and State*, 18 August 1980, in *SELECTED WORKS OF DENG XIAOPING* (1975-1982), *supra* note 21, at 304-9.

had begun to comprehend the importance of a democratic setting to safeguard people's political rights against arbitrary rule and bureaucracy. It understood law's highest authority and its universality both in formulation and in application. Such was to be the basis of a new theory of socialist law.

But the implementation of law was constrained. Ideologically Deng's "four cardinal principles" set the boundaries. The term "socialist road" referred to maintaining a dominant planned economy, supplemented by a limited market economy. The "dictatorship of the proletariat", now defined more loosely than hitherto as much the same as "people's democratic dictatorship", could allow for a degree of democracy based on a comprehensive legal system. Party leadership, moreover, was tempered by the expressed need for public supervision. Finally, "Mao Zedong thought", in its new formulation, demanded that one concentrate on the practicality of Marxism in tackling the realities of China.²⁵ On the one hand, the "four cardinal principles" were designed to provide an ideological safeguard against the possibility that emancipating the mind from dogmatism could lead to the negation of Marxism. On the other hand, the fact that they were interpreted as *living* anti-dogmatic principles offered much hope for emancipation. As one might expect, there was much debate on how to uphold them, particularly in light of the injunction to "build socialism with Chinese characteristics" and its application to law.

First priority was given to preserving social order. Second came the development of the socialist economy, and third was the promotion of democracy within a framework of political stability. Since the Party under Deng saw law as a function of socialism, the more liberal the vision of socialism (such as in Zhao Ziyang's "preliminary stage", and most recently in Jiang Zemin's "socialist market economy"), the more the scope of law was broadened. Conversely, the more conservative the notion of socialism (such as that held by Li Peng and some veterans), the more narrow the jurisdiction of law would be.

Chinese jurists assumed the task of constructing a new theory of law, upon which the Chinese legal system could be based. Inspired by Deng's desire to create a socialist legal order, progressive Chinese jurists began to review critically the Vyshinsky-style Soviet legal theory with a view to going beyond narrow instrumentalism. In an unprecedentedly relaxed

25. See RESOLUTION ON C.P. HISTORY 76-83 (Foreign Languages Press 1981). For the main features of the policy-line adopted by the Eighth Party Congress, see ZHONGGUO GONGCHANDANG LIUCIQUANGUO DAIBIAO DAHUI ZHONGYAO HUIYI (II) [COLLECTION OF IMPORTANT DOCUMENTS OF ALL FORMER NATIONAL CONGRESSES OF THE COMMUNIST PARTY OF CHINA, PART II] 74-81 (Renmin Chubanshe, 1983). For details, see generally EIGHTH NATIONAL PARTY CONGRESS OF THE COMMUNIST PARTY OF CHINA (DOCUMENTS) (Foreign Languages Press, 1981). See also Deng Xiaoping, *Uphold the Four Cardinal Principles, 30 March 1979*, in SELECTED WORKS OF DENG XIAOPING (1975-1982), *supra* note 21, at 171-86.

atmosphere they held protracted debates. But those debates were far from adventurous and remained within official parameters specified by Deng's "four cardinal principles". In a pragmatic atmosphere jurists felt that their best strategy was not to provoke leaders by pushing too far ideas about democracy but instead to show that the de-politicization of law yielded concrete benefits. All understood that the dictatorial nature of the regime and socialist legality could best be achieved without challenging the official ideology. Nevertheless there were some telling gains, as described below.

Jurists did much to discredit pure instrumentalism and, reversing the mode of thinking dominant in the 1960s, overturned ideas about the primacy of the "rule of persons" in favor of the "rule of law".²⁶ They refuted the former concept, which dated from long before Vyshinsky, and stressed the incompatibility of formal law and socialism by referencing to later attempts to place law in a "socialist" context. Jurists made much of the out-dated nature of traditional Marxist legal studies²⁷ and their inability to offer an adequate explanation of socialist law in a situation where class confrontation had "basically come to an end".²⁸ They went on to launch an unprecedented challenge to ideas about the "class nature of law" and to advocate radical ideas about the "social nature of law".²⁹ Increasingly one saw jurists attempting to persuade orthodox Marxists that law could be de-politicized by reference to current Chinese social and economic realities under the rubric of a "socialist legal system" and a "socialist system of legal studies with Chinese characteristics".³⁰ The aim was to create a new legal "ideal-type".

No new comprehensive theory resulted, yet in the rejection of ideas about the class nature of law one saw rationales for future theoretical developments. Some progressive scholars such as Wu Shihuan, Wan Bin and Zhang Zhonghou, in groping for a Chinese "socialist theory of law" and fighting legal nihilism, took the first step in what may become a new comprehensive structure. Wu Shihuan, a jurist from Zhongshan University, was emphatic that one should break away from the idea of "taking class

26. For the most comprehensive discussion in this respect, see Yu Haozheng, *Renshi Yu Fazhi Wenti De Taolun Yao Shenmo Xianshi Yiyi?* [What are the Practical Implications of the Discussion on the Question of "Rule of Persons" and "Rule of Law"], 7 MINZHU YU FAZHI [DEMOCRACY AND THE LEGAL SYSTEM] 8 (1980).

27. Xia Zhi, *Dui Makesizhuyi Faxue Tifa De Shangque* [Questioning the Formulation of Marxist Jurisprudence], 1 FAXUE [LEGAL STUDIES] 8 (1987).

28. Zhang Zhonghou, *Dui Fa De Sange Jiben Gainian De Zhiyi* [Queries on Three Fundamental Concepts of Law], 1 FAXUE [LEGAL STUDIES] 4 (1986).

29. Zhou Fengju, *Fa Shi Danchun De Douzheng Gongju Ma* [Is Law Purely an Instrument for Class Struggle?], 1 FAXUE YANJIU [LEGAL RESEARCH] 37 (1980).

30. Guanyu Jiaqiang Faxue Jiben Lilun Yanjiu De Changyi [Proposals for Strengthening Research on the Basic Theory of Law], 11 FAXUE [LEGAL STUDIES] 2 (1982).

struggle as the key link".³¹ Wan Bin, a liberal jurist from Shanghai, argued strongly that Marx and Engels had never built up a coherent theory of law and that the traditional Marxist theoretical system of law as propounded in China was strictly an invention of Soviet jurists.³² The leading figure of this new wave of thought was perhaps Zhang Zhonghou, visiting professor at the Jilin University Law School, who, by denouncing the idea that "class nature is the unique property of law", argued that the traditional theory of legal studies ought to be thoroughly "rejuvenated".³³ Indeed, all progressive scholars insisted that law was determined by "objective regularities" of social development and not by class struggle.³⁴ Zhang was the most thorough. In rejecting class as the sole determinant of law, he argued that class nature was a product of social nature. The essential properties of law were social, coercive and normative - none of which could be reduced simply to class.³⁵ This resulted in the view that while class struggle was transient, social regulation would last forever. Those reforming endeavors ended with the abandonment of a Vyshinsky-type socialist theory of law and simple economic reductionism in favor of law and legal studies "with Chinese characteristics".

With the triumph of progressive scholars over the conservative jurists concerning the manner in which China should be governed after 1982, the orientation of a new approach to law was set. The dominance of progressive thinking on law in Chinese jurisprudential circles since then has provided a theoretical basis for jurists to develop China's own "socialist theory of law". Many advocates of that theory argued that the philosophical basis for the socialist theory should rest on Marx's own ideas on law rather than on the Soviet tradition. These boiled down to a methodological injunction to start from the economic and social realities of present day China. To many, it appeared obvious that (given the transition to socialism) law was socially determined and no longer class determined, and that the essential properties of law were social, coercive and normative - none of which could be reduced simply to class. Since law had a social

31. Wu Shihuan, *Faxue Yeyao Tupo Yi Jieji Douzheng Wei Gang De Moshii* [Jurisprudence Should Also Break Away from the Model of Taking Class Struggle as the Key Link], 8 SHEHUI KEXUE PINGLUN [DISCUSSIONS ON THE SOCIAL SCIENCES] 73 (1985).

32. Wan Bin, *Chuantong Faxue De Gaige Yu Makeshihuizhuyi Faxue De Fazhan* [The Reform of Traditional Jurisprudence and the Development of Marxist Jurisprudence], 4 SHEHUI KEXUE [SOCIAL SCIENCES] 6 (1986).

33. *Faxue Lilun Yao Gengxin - Ji Zhang Youyu He Zhang Zhonghou De Yixi Tan* [Theories of Jurisprudence Need to Be Renewed - The Record of the Discussion Between Zhang Youyu and Zhang Zhonghou], RENMIN RIBAO [PEOPLE'S DAILY], Mar. 31, 1986, at 5.

34. *Zhongguo Faxue Hui Faxue Jichu Lilun Yanjiu Hui Chengli Dahui Congshu* [Summary of the General Meeting on the Establishment of the Research Institute of the Basic Theories of Jurisprudence of the Society for Chinese Jurisprudence], 3 ZHONGGUO FAXUE [LEGAL STUDIES OF CHINA] 57 (1985).

35. *Guanyu Fa De Benzhi He Zuoyong* [On the Nature and Function of Law], ZHONGGUO FAZHIBAO [NEWSPAPER OF THE CHINESE LEGAL SYSTEM], Oct. 31, 1986, at 3.

rather than a class character, it should be a social regulator instead of an instrument of class struggle.³⁶ In socialist society, all people should be (and, in contrast to the situation in "bourgeois society", in reality could be) equal before the law. Consider Zhang Zhonghou's definition of the changed nature of law in socialist society:

Law is the aggregate of rules of conduct, made and confirmed by the state or other organs of social management, the application of which is safeguarded by the coercive force of the state or these social organs to regulate social and people's relationships. In a society characterized by class conflict, law possesses a distinct class nature, expressing the will of the ruling class. In societies characterized by class harmony, law performs mostly the functions of co-ordinating economic relationships and regulating human relationships. In classless society, law's instrumental function in class struggle will vanish and law will turn completely to perform the task of social management.³⁷

The liberal discussions of law in Chinese jurisprudential circles revealed gaps between the expectations of officials and intellectuals. After 1982, the Party leadership, adopting a very favorable attitude towards law, regarded it as an effective means by which to implement its reform program. An instrumentalist view still prevailed but there had been a change in the end which the instrument was to serve. Gradually to install a comprehensive legal order in China was seen as serving the Party's views on economic reform and preserving Party rule. But that kind of instrumentalist end implied an increasingly salient non-instrumentalist way of thinking. Once Party rule was constrained to rule through law, depoliticization grew apace. Understanding the implications, scholars welcomed the Party's position. Yet there remained major differences in officials' and scholars' interpretation of the application of the "rule of law".

Put bluntly, the real relationship of the Party to law was central. When one considers that "leadership by the Party" was the first of Deng's "four cardinal principles", one has to explore the Party's real relationship to law. What had changed? Clearly there had been a move from the situation in Mao's era where the Party had enjoyed absolute leadership over the judiciary. Party policy at that time had been described as the "soul" of

36. See Carlos W. H. Lo, *Rejecting the Socialist Theory of Law: Reforming Chinese Legal Studies in the 1980s*, 7 CHINA INFORMATION 1 (1992).

37. *Guanyu Fa De Benzhi He Zuoyong*, *supra* note 35, at 3.

the people's democratic legal system and had a status higher than law.³⁸ After the Third Plenum in 1978, that attitude began to change. Since Deng Xiaoping held that "law was the highest authority", his "four cardinal principles" had to appear in legal form (as noted above); but it was not always clear just what that implied. Party leaders were unequivocal in claiming the Party and its cadres were no longer above the law in routine operations – a rejection of the old view that "Party policy was the soul of law". Leaders such as Peng Zhen spoke of a harmonious relationship between law and Party policy, since both represented the "will of the ruling class"; and that view was strongly promoted after 1984. Law and Party policy were held not to be substitutable, since they performed different roles in achieving Party objectives. Law, moreover, could only be amended in accordance with Party policy by prescribed legal procedures. There were enough contradictions in that formulation to cause much confusion.

The Party's approach here was ambivalent and often muddled. One was not always clear about the exact meaning of law being "supreme" (or the highest authority) in a "socialist" context, since the Party had consistently rejected what it considered to be the Western "bourgeois" notion of "the supremacy of law".³⁹ If law were genuinely supreme, the Party was subordinate to law and under the supervision of the judiciary instead of *vice versa*. That was a question of subordination of the Party, not one of a harmonious relationship. In any case, talk of a harmonious relationship was idealistic; law and policy would inevitably clash, as they did in all countries. The point was not to extol harmony but to specify supra-political mechanisms for conflict-resolution. Note also that while the Party talked of the primacy of law, the phrase "leadership of the Party" was inserted into the "Preamble" of the 1982 Constitution. The highest law in the land was formally subordinated to a political party; the Constitution which allowed for political manipulation. Clarity was sorely needed; but clarity was too dangerous and might impair legitimacy.

While Party spokespersons were muddled, many of the legal scholars could be more consistent. Any policy which conflicted with law, they felt, should be void. Nevertheless, it was usually much too dangerous to challenge the principle of Party leadership in the name of legality. Often lip-service was paid to Party leadership or the issue explicitly avoided, while scholars concentrated on the issue of judicial independence and independent administration of law. Some, however, were quite explicit in

38. Li Shiwen, *Ba Youpai Sufan Weifa De Fanlun [The Rebuttal of the Rightist Fallacy on the Liquidation of Counter-revolutionaries]*, ZHENGFA YANJIU [STUDIES IN POLITICS AND LAW], 1957, at 33. See also *On the People's Democratic Dictatorship and the People's Democratic Legal System*, CHINESE L. & GOV'T, Summer 1968, at 4.

39. The Party's ambiguous attitude toward the proper relationship between Party policy and law manifests a rejection of the notion of "the supremacy of law."

examining the practical implications of the "supremacy of law" after 1983. Law as the expression of the will of the people, they felt, should command the Party.

IV. THE FUTURE OF CHINESE SOCIALIST LAW

Many observers have concluded that the intellectual debate on legal questions has been overly abstract. Such a viewpoint, which demands practical guidelines for the judicial system, coincides with the Party stance that "legal studies in China lag far behind legal practice", misreads the implications of the debate on law in post-Mao China. It has been instructive to study how jurists may work on technical aspects of criminal justice without a clear vision of socialist legal order. But they grope for one. Unlike the West or even the former Soviet Union, law is still in a confused state and is full of conceptual uncertainties; legal studies are in complete turmoil. But the scope of legal reform has gradually been appreciated and crucial questions have emerged.

What sort of legal order does the Party intend to create? What purposes are served by establishing a legal system? What is the status of that legal system in socialist society ideologically and practically? What is the proper relationship between law and politics? What is the relationship of law to Party policy? To what extent should law protect people's democratic rights? Finally, what is to be pursued in criminal justice - formal justice or class justice? All of these questions determine the nature of the legal system to be installed in China and, in turn, dictate the direction of legal reform, the legal system and the legal values with which the people are to be inculcated. Searching for answers to those questions, scholars aim to provide a solid foundation for the structural framework of legal studies in China. In short, without clear ideas about a socialist legal system, Chinese jurisprudence can have no long-term goals.

But there is reason for optimism. Belief in law is now seen as positive rather than negative in socialist society. This development is similar to occurrences in the post-Stalinist Soviet Union. Breakthroughs in Soviet legal development came mainly from intellectual efforts. Despite the poverty of legal practice in the Stalinist era, Soviet jurists explored the nature of socialist law deeply enough to formulate a legal vision clear enough to guide the development of law. Thus the former Soviet Union could embark on sweeping legal reforms after Khrushchev. Much can be learned from Soviet experience. After all, Leninist hostility to law was replaced by a positive assessment. That was the spirit in which Chinese scholars tried to forge a "socialist legal system" in the early years of legal reform. Although discussions were contained within an old framework of "socialist law", discarding taboos led to considerations of the "heritability of law" and the extent to which Chinese scholars might learn from Western

experience.

More significantly a comprehensive review of "Marxist jurisprudence" led to re-organization of the entire discipline of legal studies. Revival of legal studies determined the professional values and morality of legal professionals. Legal education, so important for socialization, was essential to transform the legal values of an entire population in the long-run. But the Party still rules. Scholars propose, but the Party disposes. Yet the Party is poorly-equipped in knowledge of law. Once it had decided whole-heartedly to establish a comprehensive socialist legal order, it required the services of jurisprudential circles. Its control is limited. Suffice it to say that the extent to which Chinese jurisprudential circles can exercise tutelage depends on the Party's commitment to transforming China from a police state to a legal society. China's quest for a socialist market economy under Jiang's leadership has raised our hopes.

But one should remember the circumstances under which Jiang came to power - the crackdown of 1989. After that crackdown one heard a reaffirmation of the need for more traditional Marxist legal studies,⁴⁰ and a reaffirmation of a class-centered approach⁴¹ held sway for a time. But one still heard the voices of progressives,⁴² and conservatives were cautious.⁴³ Scholars still refused to take Marxist theory as dogma⁴⁴ and

40. A handful of articles and speeches re-asserting the theme of taking Marxism as the proper perspective in conducting legal studies appeared between August 1989 and 1991. The most significant ones are: *Zai Falu Xue Lingyu Jianchi Makesizhuyi [Upholding Marxism in the Realm of Legal Studies]*, ZHONGGUO FAXUE [CHINESE LEGAL STUDIES], Sept. 1989, at 121-23; Zhang Youyu, *Woguo Faxue Bixu Yi Makesizhuyi Faxue Wei Zhidao [Chinese Legal Studies Must Be Guided By Marxism]*, QIUSHI [SEEKING THE TRUTH], Apr. 1990, at 14-20. As for speeches, see Zhang Youyu, *Tantan Faxue Yanjiu Lilun [Talks on the Studies of Jurisprudence]*, FAXUE TIANDI [FORUM FOR LEGAL STUDIES], Feb. 1991, at 1-3; Chen Pixian, *Faxue Yanjiu Bixu Jianchi Makesizhuyi Zhidao [Legal Studies Must Uphold the Guidance of Marxism]*, FAZHI RIBAO [LEGAL SYSTEM DAILY], May 29, 1991, at 1.

41. On the restoration of a class perspective of law in the wake of the "June Fourth" incident, see Ji Xuedong, *Guanyu Fa De Benzhi Shuxing De Jige Wenti [Certain Questions on the Essence of Law]*, JIANGXI SHEHUI KEXUE [SOCIAL SCIENCES OF JIANGXI], Feb. 1990, at 113-117; Zhou Huiguo, *Lun Falu De Jieji Xing He Shehui Xing Zhi Zheng [On the Contention Between the Class Nature and Social Nature of Law]*, NANJING DAXUE XUEBAO [JOURNAL OF NANJING UNIVERSITY], Apr. 1990, at 6-12; Wei Zailong, *Lun Faxue De Yanjiu Fangfa [On the Research Method of Legal Studies]*, 4 FAXUE PINGLUN [COMMENTARIES ON LEGAL STUDIES] 1 (1991).

42. For the latest discussions in this respect, see Yang Haikun, *Zhongguo Shehuizhuyi Fazhi De Lilun Yu Shijian [Theory and Practice of the Chinese Socialist Rule of Law]*, FAXUE YANJIU [LEGAL RESEARCH], Jan. 1991, at 9-14.

43. Such a sentiment was fully expressed by Sun Guohua, one of the most celebrated conservatives from the Department of Law, People's University of China. See Sun Guohua, Guo Huacheng, and Chen Guoqing, *Falu Xue Yanjiu Shinian [A Decade of Studies on Law]*, FALU XUEXI YU YANJIU [STUDYING AND RESEARCHING LAW], Feb. 1990, at 1-7. See also Guo Daohui, *Yong Makesizhuyi Zhexue Yanjiu Faxue [Employing Marxist Philosophy to Study Jurisprudence]*, ZHONGWAI FAXUE [LEGAL STUDIES IN CHINA AND OTHER COUNTRIES], Feb. 1992, at 45-61.

44. See You Junyi, *Shi "Gengxin" Shi Fujiu? Xuexi Makesizhuyi Falu Guan De Yidian Tihui ["Reforming" or Restoring the Past? Some Insights Gained from the Study of the Marxist Perspective of Law]*, SHEHUI KEXUE [SOCIAL SCIENCES], Apr. 1990, at 9-12; Liu Delin, Wu Yiping,

persisted with the quest for a distinctively Chinese approach to law and legal studies.⁴⁵ Eventually the importance of creativity in legal studies was stressed.⁴⁶ There was a new flourishing of creative debate, carrying on where the debates of the 1980s had been truncated.⁴⁷ All this was designed to accommodate the idea of a "socialist market economy",⁴⁸ which now seems irreversible.

Jiang Zemin, in adopting the mantle of rule, seems to have emulated Deng Xiaoping.⁴⁹ He appears to have continued Deng's insistence on market reform within a context of stability. He has reaffirmed commitment

Zhengque Lijie Makesizhuyi Faxue Sixiang [Correctly Understanding Marxist Legal Thought], YANCHENGSHIZHUAN XUEBAO, Apr. 1990, at 23-26; Zhang Wenxian, Ma Xinfu, Zheng Chengliang, *Xin Shiqi Zhongguo Falu Xue De Fazhan Yu Fansi [Development and Reflections on Chinese Legal Studies in the New Era]*, ZHONGGUO SHEHUI KEXUE [SOCIAL SCIENCES IN CHINA], June 1991, at 167-80.

45. For the latest review on this subject, see generally WANG YONGFEI & ZHANG GUICHENG, *ZHONGGUO FALU XUE YANJIU ZONGSHU YU PINGJIA [SUMMARY AND ASSESSMENT OF CHINESE LEGAL STUDIES]* (1992).

46. See Zheng Yongjiu, *Chuangxin, Zhongguo Falu Xue De Genben Siwei [Creativity, the Thought Underpinning Chinese Legal Studies]*, FAXUE [LEGAL STUDIES], July 1992, at 2. See also his earlier article, Zheng Yongjiu, *Falu Yu Fazhan - Jiushi Niandai Zhongguo Fa Zhexue De Xin Guandian [Law and Development - New Ideas of Chinese Philosophy of Law in the Nineties]*, ZHONGWAI FAXUE [LEGAL STUDIES IN CHINA AND OTHER COUNTRIES], Apr. 1992, at 5-10; and more recently Chen Zhen, Shi "Zhengque Yindu" Haishi Wudu [Is it a "Correct Guide" or An Incorrect One?], ZHONGGUO FAXUE [LEGAL STUDIES OF CHINA], May 1995, at 48-56; and Liu Chang, *Duoyuan Shidai Yu Duoyuan Faxue [An Era of Pluralism and Pluralism in Jurisprudence]*, XUEYU TANTAO [STUDY AND EXPLORATION], Mar. 1995, at 96-100.

47. For the details of debates on law in the 1980's, see Lo, *Rejecting the Traditional Socialist Theory of Law*, supra note 36. For a summary of latest developments, see Zhang Shaoyu, *Falu Sue Yaniu Zongshu [A Summary of Research in Legal Studies]*, FAXUE YANJIU [LEGAL RESEARCH AND STUDIES], Jan. 1995, at 3-8, and Li Lin, *Zouxiang Ershiyi Shiji De Falu Xue [Toward the Legal Studies of the Twenty First Century]*, ZHONGGUO FAXUE [LEGAL STUDIES OF CHINA], May 1995, at 122-24, and *Falu Xue De Gaige Yu Fazhan [The Reform and Development of Legal Studies]*, FALU KEXUE [LEGAL SCIENCE], Mar. 1995, at 3-18.

48. See, e.g. Sun Guohua, Zhu Jingwen, *Dui "Falu Ying Yi Shehui Wei Jichu" Zhi Wojian [My Personal Views on "Law Should Take Society as its Basis"]*, FAXUE [LEGAL STUDIES], Nov. 1992, at 8-11; Liu Han, Xia Yong, *Falu Xue Mianlin De Xin Ketu [New Topics to Be Faced by Legal Studies]*, FAXUE YANJIU [LEGAL RESEARCH AND STUDIES], Jan. 1993, at 3-11. For those dealing specifically with the market economy, see in particular Shi Tong, *Shichang Jingji Yu Falu Xiandaihua [Market Economy and the Modernization of Law]*, FAXUE [LEGAL STUDIES], Jan. 1993, at 1-6; Fang Shirong, *Fazhi Yu Shichang Jingji Xiang Shiying De Ruogan Wenti Tanta [Inquiries on Certain Issues Concerning the Mutual Adjustment of the Legal System and the Market Economy]*, ZHONGNAN ZHENGFA XUEYUAN XUEBAO [JOURNAL OF MIDDLE-SOUTH CHINA LAW AND POLITICAL SCIENCE INSTITUTE], Feb. 1993, at 1-5; Wang Shuwen, Lun Jianli You Zhongguo Tesi De Shehui zhuyi Shichang Jingji Falu Tixi [On the Establishment of a System of Law with Chinese Characteristics for the Socialist Market Economy], ZHENGFA LUNTAN [POLITICS AND LAW FORUM], Apr. 1995, at 7-11. For latest developments, see Qiu Chunlan, *Shichang Jingji Yu Fazhi Jianshe Yanjiu Zongshu [A Summary of the Studies on the Market Economy and the Construction of the Legal System]*, SHOUDU SHIFAN DAXUE XUEBAO [JOURNAL OF BEIJING NORMAL UNIVERSITY], Apr. 1995, at 76-79.

49. See generally Jiang Leaves His Mark on the Media, SOUTH CHINA MORNING POST, Oct. 3, 1997; Backing for Jiang Ideology, SOUTH CHINA MORNING POST, Jan. 26, 1996.

to the regulative functions of law in a market economy⁵⁰ and has promoted new economic legislation.⁵¹ He has renewed emphasis on establishing legal infrastructure, re-enforcing judicial independence, improving the quality of legal personnel, training lawyers and promoting popular legal awareness.⁵² As noted before, his approach is instrumental but with far-reaching consequences. But, one must remember, there remain other objects of an instrumentalist approach beyond economic development. Jiang has made it quite clear that cultural and ideological purity may not be sacrificed for temporary economic growth.⁵³ The authority and validity of Marxism still appears to stand beyond challenge.⁵⁴ Thus Jiang still appears to adhere to a repressive view of law rather than to emphasis on human rights; evidence of such a view may be seen in the treatment of dissidents such as Wei Jingsheng and Wang Dan and instructions given to the media to toe the Party line.⁵⁵ To retain legitimacy Jiang has resorted to old ideas of ideological conformity.⁵⁶ The regime has adopted a "strike-hard" policy in cracking down on violent and hard-core crimes.⁵⁷ The punishments are harsh and the legal proceedings are rushed.

V. CONCLUSION

Despite the events of 1989, it is fair to say that Deng's conception of law has generally advanced beyond a simple instrumental concern with Marxist political rule. Although instrumental concerns remain and are painfully re-emphasized time and again, law has increasingly been seen as a social regulator and as a mechanism for effective administration. Law has increasingly been seen both as a channel for economic modernization (instrumental perhaps, but in a much broader sense than before) and,

50. Jiang Zemin, *Accelerating Reform and Opening-Up*, BEIJING REVIEW, Oct. 26 - Nov. 1, 1992, at 23. Since then, the regime has been busy with economic legislation and improving legal facilities for a new economic order. See *Legal Service for Economic Order*, BEIJING REVIEW, Aug. 9-15, 1993, at 4; *Reform Brings Out Corporate Law*, BEIJING REVIEW, Sept. 6-12, 1993, at 24-25; and *Lawyer System Reform to Match Market Economy*, BEIJING REVIEW, Nov. 6-12, 1993, at 4.

51. For a summary of economic legislation between 1993-95, see *Continued Improvement in Chinese Legislation*, BEIJING REVIEW, Jan. 8-14, 1996, at 22-24.

52. *Id.*; see also *Political Reform, Next Target*, BEIJING REVIEW, Dec. 21-27, 1992, at 4.

53. See *Political Reform, Next Target*, *supra* note 52 at 9-14.

54. See generally *Party Stresses Value of Marxist Foundations*, SOUTH CHINA MORNING POST, June 11, 1996.

55. *Media to Remain in Hands of Party*, BEIJING REVIEW, Feb. 12-18, 1996, at 6; see generally also *Press Reminded to Toe Party Line*, SOUTH CHINA MORNING POST, Apr. 22, 1996; *Hardline Jiang Propagandists for Promotion*, SOUTH CHINA MORNING POST, July 3, 1996.

56. See *supra* note 49.

57. For example, it was reported that in the three-month period between April and June 1996 over a thousand executions had taken place; *Crime Purge Sees 98 More Executed*, SOUTH CHINA MORNING POST, July 25, 1996, at 7; see generally also *Courts to Step Up Executions*, SOUTH CHINA MORNING POST, May 2, 1996.

despite rather severe crises, is coming to be seen as the principal means to resolve conflict and to regulate social order. Yet one is always conscious of the fact that Deng always saw "rule by law" occurring under Party tutelage, and Jiang seems to continue to hold that position.

In the revived legal studies, which Deng sponsored, one detects a strong demand for a new socialist theory of law upon which to base the legal system, independent of that of the former Soviet Union. "Chinese characteristics" have been stressed and content may be given to that term when one considers that the Chinese political economy differs from that of the former Soviet Union in that it is a mixed economy operating in a more open way. This is what "the preliminary stage of socialism" and later, "the socialist market economy" boils down to; and as such has major implications for Chinese law, demanding a new socialist conception to accommodate a regulatory legal regime. Yet it has been difficult to break away from Soviet-style thinking, so long as the supreme status of Party leadership remains unshakable. The "socialist rule of law" remains limited.

Yet one must not be too pessimistic. The fact that jurists could eradicate legal nihilism is impressive. It enabled jurists to entrench the "rule of law" in Chinese legal thinking. Discrediting the thesis of "class will", moreover, after years of heated debate, is considerable progress. Law has been considerably de-politicized and such de-politicization has intensified demands for formulating China's own socialist theory, capable both of expounding legal issues and guiding legal reform. A specifically Chinese form of legal theory and jurisprudence is vital if institutional changes are to continue and is vital to developing a popular legal culture.

The demise of the Soviet Union should not deter scholars from considering the continuing importance of China's inherited "socialist theory of law". Yet, clearly, the demise of the Soviet Union will impel Chinese jurists to move further away from Soviet frames of reference. In the long-term, more and more Western approaches to law will be adopted. In the meantime, however, legal scholars will be most remiss if they ignore China's attempts in recent years to employ Marx's ideas as the philosophical basis of law, China's realities as the empirical source of law, social nature as the essential properties of law, the economic base as the chief determinant of law, and regulation and protection of people's democratic rights as the major functions of law.