

# **On the Establishment, Concept and Features of the Chinese System of Laws under the “One Country, Two Systems” Policy**

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On 14<sup>th</sup> March 2011, the 2<sup>nd</sup> Plenary Meeting was held at the 4<sup>th</sup> Session of the 11<sup>th</sup> National People’s Congress (NPC), and the Chairman Wu Bangguo of the NPC Standing Committee delivered the Work Report on behalf of the NPC Standing Committee. Wu Bangguo declared solemnly in the Report, “A socialist system of laws with Chinese characteristics has been formed which is based on the situation and realities in China; complies with the requirements for reform, opening up and socialist modernization; represents the will of the Party and the people; is rooted in the Constitution; has several types of laws including laws related to the Constitution, civil laws and commercial laws, as its backbone; and has different levels of legal force, reflected in laws, administrative regulations, and local statutes. There are laws to cover every area of economic, political, cultural, social and ecological development in the country.” This symbolizes that the legislative goal set forth at the 15<sup>th</sup> National Congress of the Communist Party of China (CPC) of forming a socialist system of laws with Chinese characteristics by 2010 was attained on schedule.

Chairman Wu Bangguo emphasized: the establishment of the socialist system of laws with Chinese characteristics is a major milestone in the history of developing China’s socialist democratic system of laws and an important indicator of the maturing of the socialist system of laws with Chinese characteristics, and it has great practical and far-reaching historical significance. That is, the socialist system of laws with Chinese characteristics is the legal foundation for permanently preserving the inherent qualities of socialism with Chinese characteristics, is a system of laws that embodies the innovations and praxes of socialism with Chinese characteristics and the legal guarantee for the prosperity and development of socialism with Chinese characteristics.

Therefore, “socialist system of laws with Chinese characteristics” has not only become the hot vocabulary and highlight of the 2011 sessions of the NPC and the Chinese People’s Political Consultative Conference (CPPCC), but also attracted great attention and heated discussions in the international society. According to the NPC representatives and the CPPCC members, the establishment of the system of laws will form the solid foundation for implementing the basic strategy of the rule of law. According to common people, the establishment of the system of laws will provide reliable safeguard for them to pursue happy life. And according to the world media, the socialist system of laws with Chinese characteristics is beneficial for both the development of China and the harmony, stability and prosperity of the world. Of course, different opinions were voiced both at home and abroad relating to the understanding of the socialist system of laws with Chinese characteristics, there is even challenge of the solemn declaration of “Five Don’ts” (that is,

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we don't employ a system of multiple parties holding office in rotation; we don't diversify our guiding thought; we don't separate executive, legislative and judicial powers; we don't use a bicameral or federal system; and we don't carry out privatization). Such different opinions are closely related to people's different stands and values, and are understandable. This article combines the basic theory of Maxism and the Chinese social realities from the perspective of scientific outlook on development and further discusses certain significant issues of the Chinese system of laws under the "One Country, Two Systems" policy, calling for advice from Chairman Wu Bangguo and colleagues in the legal scholarship.

## I. Constant perfection of system of laws is an eternal theme

### 1.1 The concept of system of laws is not static

According to the traditional theory of law, system of laws generally refers to "the integrated system formed with different branches of law as interrelated components, such branches of law are made up of all the current laws and regulations of a state according to the different classifications."<sup>1</sup> Since the 3<sup>rd</sup> Plenary Meeting of the 11<sup>th</sup> Session of the National Congress of CPC, the legislative work in China has been developed significantly. In 1993 the relevant leader in charge of the work pointed out: "a socialist system of laws with Chinese characteristics has been established initially with the Constitution as its centre and the laws available in the major and basic aspects of political, economic and social life."<sup>2</sup> At that time, it was believed in various books and writings of jurisprudence that the current Chinese system of laws is an integrated system rooted in the *Constitution of the People's Republic of China* (hereinafter as "the Constitution") and composed of various branches of law such as administrative law, civil law, economic law, labour law, criminal law, military law and procedural law.

The concept of system of laws and Chinese system of laws did not come from nowhere, nor is it arbitrarily decided by anyone, instead, it is the necessary result of the comprehensive development of economy, society, politics and culture of a state, and is developed historically. In ancient Greek, there was no classification of law into branches and the system of laws was not discussed either. It was also the same case in ancient Rome. However, "till the great development of Roman law, the great jurist Domitius Ulpianus (BC 190-228) first classified the laws into public law and private law, which started the history of branches of law."<sup>3</sup> Since about the capitalist revolution, written or unwritten constitutions were developed in various countries such as Britain, America, France, Germany and Italy, and specialized civil codes, codes of civil procedures, commercial codes, criminal codes, codes of criminal procedures and other codes were compiled. With relative clear classification of law branches and their interrelation, the concept of system of laws came into existence.

In ancient China, there was no classification of law into branches in legislation nor was there in legal theory. The real classification of law into branches started with the legal reform led by Shen Jiaben at the end of the Qing Dynasty. At that time, Shen Jiaben and the reformers took the courage to revise and delete the *Great Qing Legal Code*, deleting the six chapters of Li (Civil Personnel), Hu (Finance), Li (Rites and Education), Bing (Military), Xing (Justice) and Gong (Public Works), and made separately the *Great Qing Existing Criminal Code*, the *Draft of Great Qing Civil Code*, the *Law of Court System and Practice*, the *Draft Code of Criminal Procedures*, the *Draft Code of*

*Civil Procedures* and the *Draft Commercial Code of Great Qing*. "These codes and drafts indicate that the concept and theory of branches of law and System of laws in western countries were formally introduced into China, and the branches of law start to be developed."<sup>4</sup> During the period of the Nanjing Government of Kuomintang (KMT), a system of *Six Codes* including Constitution, Civil Code, Code of Civil Procedures, Criminal Code, Code of Criminal Procedures and Commercial Code (or administrative laws) was formed.

The laws of the new China was established based on the repeal of the *Six Codes*. However, during the 30 years after the establishment of the PRC, due to the influence of leftist thoughts, especially with the severe damage of the Cultural Revolution when the laws were ignored, there was almost no system of laws in mainland China except the Constitution which was only kept in writing instead of in practice and certain separate laws and regulations, there was basically no basic codes of any branches of law.

## **1.2 The general process for the establishment of system of laws in the mainland China**

The socialist system of law with Chinese characteristics was proposed and realized through a process of exploration, practice and constant development. In 1982, it was proposed for the first time at the 5<sup>th</sup> Session of the 5<sup>th</sup> NPC: we should legislate based on the realities of China according to the principle of socialist system of laws and establish gradually the independent system of laws with Chinese characteristics. In 1987, the Work Report of the 13<sup>th</sup> National Congress of the CPC declared to the world for the first time: China has gradually developed the socialist democracy and system of laws, and the socialist system of laws based on the Constitution is developed initially. In 1993, it was proposed in the *Decision of the Central Committee of the CPC on Certain Issues Concerning Establishment of Socialist Market Economy* that China's goal for developing system of laws is to follow the principle stipulated in the Constitution, speed up the legislation of economy and further improved the civil and commercial laws, criminal law, laws relating to the state institutions and administrations, and to establish rudimentarily by the end of this century a system of laws suitable for the socialist market economy.

In 1997, while establishing the basic strategy of the rule of law, the Work Report of the 15<sup>th</sup> CPC National Congress, for the first time, set the clear legislative goal of forming a socialist system of laws with Chinese characteristics by 2010 for building a socialist country based on the rule of law. "From proposal of establishing the socialist system of laws with Chinese characteristics in 1997 till 2010, there existed three phases: during the 9<sup>th</sup> Session of the NPC, the socialist system of laws with Chinese characteristics was developed initially; during the 10<sup>th</sup> Session of the NPC, the socialist system of laws with Chinese characteristics was established basically; and from the 11<sup>th</sup> Session of the NPC to 2010, the socialist system of laws with Chinese characteristics was established."<sup>5</sup> Currently, there are 38 constitutional laws, 33 civil and commercial laws, 78 administrative laws, 60 economic laws, 18 social laws, 1 criminal law, 10 procedural laws on litigation and non-litigation, and together with the Constitution, there are 239 laws in total, which constitute the core of the current Chinese system of laws.

So, we can infer from the above discussion that the current Chinese system of laws is developed under the guidance of the theory of building the socialism with Chinese characteristics as proposed by the CPC, it is not the copy of the system of laws in western capitalist countries (including civil law and common law countries), nor is it the inheritance of the system of laws in

the old China. It is a brand-new system of laws gradually constructed according to the needs of the extensive development of the economic and political system in the new era of China. It is not permanent, and it will be improved and mature with the development of the social economy and the relevant political, legal and cultural situations.

## **II. The establishment of Chinese system of laws under the “One Country, Two Systems” principle and its new concept**

### **2.1 It is necessary to re-understand the Chinese system of laws**

As one of the major leaders of China and the CPC, Wu Bangguo, on its great post as the Chairman of the NPC, has made consistent efforts during his term to promote the implementation of major decisions and arrangements of the central leadership, stimulating comprehensive, balanced and sustainable economic and social development, and has made new contributions. However, the author holds that the socialist system of laws with Chinese characteristics illustrated by Wu Bangguo refers to the current system of laws in the mainland China, instead of the current system of laws for the entire China.

Nevertheless, Wu Bangguo emphasized: “Social praxis is endless and legislative work should also constantly move forward... and it must develop as the praxis of socialism with Chinese characteristics. Furthermore, the socialist system of laws with Chinese characteristics is not static, closed or fixed, but rather, dynamic, open and developing. We must also note that, although our system of laws has already been formed, it is not perfect or flawless...” The concept of Chinese system of laws needs to “keep up with the times, develop and improve”.

The significant speech of Deng Xiaoping during his south China tour and the great strategic goal to build the socialist market economy proposed at the 14<sup>th</sup> National Congress of the CPC have injected vitality and energy to the development of jurisprudence in China. At the turn of the century, the practice of the policy of “One Country, Two Systems” proposed by Deng Xiaoping in Hong Kong and Macao provided fresh soil for the renovation and development of Jurisprudence in China, and new thoughts and perceptions. Therefore, it is necessary to re-understand the concept, development and features of the Chinese System of laws.

### **2.2 The development of Chinese system of laws under the “One Country, Two Systems” principle**

Under the policy of “One Country, Two Systems”, Hong Kong returned to her motherland in 1997 and Macao, in 1999. We believe that the Question of Taiwan will also be resolved at proper time according to the policy of “One Country, Two Systems”. How should we describe the concept of Chinese System of laws after reunification? What are the changes of its meaning and inner structure? What are its features? All these become the new topic for research of contemporary Chinese politics and jurisprudence.

According to the generalization of Deng Xiaoping, the idea of “One Country, Two Systems” means practicing two systems within one country, that is, within the PRC, socialism is practiced in mainland with a population of 1.1 billion while capitalism is practiced in Hong Kong, Macao and Taiwan. “This scientific conception is the significant development of Marxism, it has enriched the contents of building socialism with Chinese characteristics and established ideological and

theoretical foundation for peaceful reunification, revitalization of the Chinese nation, and it has significance in guiding the construction of the socialist system of laws in China.”<sup>6</sup> The author holds that China will definitely develop a new system of laws corresponding to the new political concept of “One Country, Two Systems”. This is the new national condition for China which should not be neglected.

Here, we will first of all analyze the change of system of laws (structure) before and after the return of Hong Kong and Macao. Before the return of Hong Kong, due to the long-term colonization of Britain, Hong Kong laws were closely related to British laws with respect to the sources of law, and the System of laws was very complex. Simply speaking, it is composed of three parts: firstly, the laws of royal Britain including constitutional laws such as the *Hong Kong Letters Patent* and the *Hong Kong Royal Instructions*; secondly, British laws including the legislation of the British Parliament (acts) and the British common law and equity law; and thirdly, laws (regulations) and subordinate legislation made by Hong Kong Legislative Council and the Chinese traditional customs recognized by the Legislative Council.

Great changes took place with respect to the System of laws after the return of Hong Kong. Article 18 of the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* (hereinafter as “the Hong Kong Basic Law”) provides: “The laws in force in the Hong Kong Special Administrative Region shall be this Law, the laws previously in force in Hong Kong as provided for in Article 8 of this Law, and the laws enacted by the legislature of the Region.” and the national laws listed in Annex III to the Hong Kong Basic Law. So, the system of laws in Hong Kong after its return does not include the former royal British constitutional laws. The system of laws in Hong Kong after its return is composed of four parts: firstly, the Hong Kong Basic Law (the supreme law in the Hong Kong SAR and no other laws implemented in the Hong Kong SAR shall contradict with it); secondly, former laws of Hong Kong, that is common law, equity law, acts, subordinate legislation and customary laws (all these remain except the part which is not in compliance with the Hong Kong Basic Law or amended by the legislative body of the Hong Kong SAR); thirdly, laws made by the legislature (Legislative Council) of the Hong Kong SAR; and fourthly, a few national laws (mainly laws relating to national defense and diplomacy, promulgated or implemented by the Hong Kong SAR locally).

Unlike Hong Kong, Macao had been occupied by Portuguese for a long time and the Portuguese System of laws was adopted there; therefore, the Macao System of laws before its return is composed of four parts: the *Constituição da República Portuguesa* (Constitution of the Portuguese Republic), *Estatuto Orgânico de Macau* (Organic Statute of Macao), other Portuguese laws (the Civil Code, the Commercial Code, the Civil Procedure Code, the Penal Code, the Criminal Procedure Code) and the laws enacted by the legislature of Macao (eg., the Bank Law, the Labour Law and the Land Law).

The Macao System of laws after its return is much different from that before its return. Article 18 of the *Basic Law of the Macao Special Administrative Region of the People's Republic of China* (hereinafter as “the Macao Basic Law”) provides: “The laws in force in the Macao Special Administrative Region shall be this Law, the laws previously in force in Macao as provided for in Article 8 of this Law, and the laws enacted by the legislature of the Region.” and the national laws listed in Annex III to the Macao Basic Law. Accordingly, the system of laws in Macao after its return is composed of four parts: firstly, the Macao Basic Law (the supreme law in the Macao SAR which is the basis for various relevant legislation in the Macao SAR); secondly, former laws of

Macao and other laws, ordinances, administrative regulations and other normative documents made by other competent authorities (all these remain except the part which is not in compliance with the Macao Basic Law or amended by the legislative body of the Macao SAR); thirdly, laws made by the legislature (Legislative Assembly) of the Macao SAR; and fourthly, a few national laws (mainly laws relating to national defense and diplomacy, promulgated or implemented by the Macao SAR locally). We must point out that the *Estatuto Orgânico de Macau* formerly applicable in Macao certainly is not regarded as the former laws which still remains and is not a part of the Macao system of laws after its return.

It is necessary to point out that both the Hong Kong Basic Law and the Macao Basic Law are made in accordance with the Constitution. Article 31 of the Constitution provides: “The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People’s Congress in the light of the specific conditions.” The Hong Kong and Macao Basic Laws were made by the NPC, the supreme legislature of China, and were implemented one after another in the Hong Kong SAR and the Macao SAR. This indicates that the respective system of laws in Hong Kong and Macao with its respective Basic Law as its supreme law is still rooted in the Constitution which has the supreme legal force.

Regarding the system of laws in Taiwan, there is also a process of development and changes. The current system of laws in Taiwan is derived from the system of *Six Codes* in the old China, and has been constantly innovated and developed into a relatively scientific and complete capitalist system of laws in the process of learning from the experience of developed western countries in building their systems of laws combined with the reality in Taiwan. After the peaceful reunification of both sides of Taiwan Straits, new changes will take place with respect to Taiwan system of laws. However, there is no doubt that a new system of laws in Taiwan with richer contents and more rational structure will appear in the world.

### **2.3 The concept and meaning of the Chinese system of laws under the “One Country, Two Systems” principle**

According to the above analysis, the system of laws in traditional sense and the old concept of Chinese system of laws cannot reflect and generalize the new situation and realities anymore. It lags far behind the objective situation of Chinese social, economic and political development. Therefore, we must update our idea (concept) in order to make the theory of legal science better serve the great practice of the “One Country, Two Systems” policy.

The author suggests that the new concept be expressed as follows:

The Chinese System of laws under the “One Country, Two Systems” principle (also known as the greater System of laws of China) is an integrated system composed of the main part of the socialist system of laws with Chinese characteristics and the respectively independent systems of laws in the Hong Kong SAR, the Macao SAR and Taiwan, with them interrelated with, coexisting with and mutually promoting each other.

Then, how do we understand the nature of the Chinese System of laws under the “One Country, Two Systems” principle? Laws belong to superstructure of a society, and their nature is determined by the nature of the society. Since the mainland China has entered socialist society, even though it is still at the rudimentary stage, it is still socialist society, the current system of laws must be socialist in nature. With several systems of laws of different natures coexisting with each

other, the predominant and determinant system is the socialist system of laws with Chinese characteristics in mainland. Such system of laws and its legal system are established on the basis of the socialist public ownership as the predominant with various systems of ownership as supplements reflecting the views of the CPC and the common will and interests of all people. After the SAR was established, changes took place regarding the Chinese laws, and a part of laws with capitalist nature were added although they did not affect the nature of socialist laws in mainland. Although the nature of socialist laws in mainland remains unchanged, a few national laws are applicable to the two SARs, which will relate to the Hong Kong laws or the Macao laws. However, the application of these national laws in Hong Kong and Macao does not change the capitalism – the nature of society in Hong Kong and Macao and the nature of their laws.

Hu Jintao once pointed out that “‘One Country, Two Systems’ is the unique contribution of the Chinese nation to the political civilization of mankind... it is a significant component of the great rejuvenation of Chinese nation.” It is also a significant component of the system of theory of socialism with Chinese characteristics. Sincere discussions of the system of laws with Chinese characteristics under the “One Country, Two Systems” principle are important supplements and necessary extension of the research on the system of laws with Chinese characteristics, and are also the objective need for the constant improvement and perfection of the Chinese system of laws to keep up with the changes of time. Sincere discussions of the system of laws with Chinese characteristics under the “One Country, Two Systems” principle are positively significant for promoting and reinforcing the great interest of peaceful reunification of our motherland, promoting and prospering the science of Marxist politics and jurisprudence and for developing the political civilization of mankind.

### **III. Features of Chinese system of laws under the “One Country, Two Systems” principle**

The Chinese system of laws under the “One Country, Two Systems” principle has the following features when compared with the Chinese system of laws in the traditional sense (the system of laws in mainland China):

Firstly, the Chinese system of laws under the “One Country, Two Systems” principle has a richer content, and a structure of more levels. Before the practice of the “One Country, Two Systems” policy, China was a unitary socialist country with only one unitary socialist system of laws, i.e., “a harmonious unitary system with the socialist Constitution as the major part and the current laws of different branches as integrated components.”<sup>7</sup> However, after the practice of the “One Country, Two Systems” policy, China became a complex unitary country. The content of the Chinese system of laws has been enriched, as the Hong Kong system of laws, the Macao system of laws and the Taiwan system of laws, have been or will be incorporated in it.

Before the practice of the “One Country, Two Systems” policy, the Chinese socialist system of laws “does not include international laws, nor invalid domestic laws; it should be a unitary entity of the organic linkage of all current branches of laws.”<sup>8</sup> That is to say, the current different branches of law reflect the inner structure of the system of laws and are the basic components of the Chinese system of laws. However, the inner structure of Chinese system of laws under the “One Country, Two Systems” policy has taken obvious changes, and it is no longer composed of different

branches of laws, instead, of the system of laws in mainland China, the system of laws in Hong Kong SAR, the system of laws in Macao SAR and the system of laws in Taiwan which are separate from each other. Of course, the above four independent systems of laws are still composed of their respective branches of laws. Thus, the inner structure of the Chinese system of laws under “One Country, Two Systems” has more complex levels.

Secondly, the Chinese system of laws under the “One Country, Two Systems” policy results in a situation of long-term coexistence and mutual promotion of two systems of laws with different natures. The system of laws in mainland China is based on the socialist system of public ownership as the major system of ownership with supplement of various economic systems of ownership which reflects the view and policy of the CPC, represents the common will and interests of all people and serves for the construction of modernism. Therefore, this system of laws is socialist in nature.

According to the Hong Kong Basic Law and the Macao Basic Law, their former laws remain basically. Meanwhile, the Hong Kong SAR and the Macao SAR both enjoy legislative power and are entitled to making laws according to the local economic, political and cultural needs. These former laws and the laws made by the legislature in the Hong Kong SAR and the Macao SAR may take different forms, but they are based on the capitalist economic basis of private ownership, made according to the principles of capitalism and serve the capitalism in Hong Kong and Macao, and the system of law is capitalist in its nature. No matter how the CPC will resolve the Question of Taiwan, the former capitalist system of laws in Taiwan will basically remain, and “the judicial independence and final power of adjudication need not to be reserved by Beijing”.<sup>9</sup>

Thus, after the practice of the “One Country, Two Systems” policy, there existed a situation of long-term coexistence of the socialist system of laws and capitalist system of laws in China. “Such two systems are mutually contradictive but unified with each other, independent from each other, contradicted against each other but also mutually related.”<sup>10</sup> The former situation of only one unitary socialist system of laws in China was thus changed.

Of course, the two systems of laws with different natures coexist, but they are not equal with each other. Such coexistence is under the premise that the socialist system of laws in mainland China (the state subject) is the major part and the socialist system of laws is allowed in Hong Kong, Macao and Taiwan. Meanwhile, the system of laws in such areas is also restricted by the socialist system of laws and shall not contradict with the Constitution and the Hong Kong Basic Law and the Macao Basic Law which are made by the NPC.

Thirdly, there are laws of three different legal families within the Chinese system of laws under the “One Country, Two Systems” principle. According to the general understanding of the contemporary legal theory, there exists three legal families in the world, they are the two families of capitalist laws which are influential worldwide (common law family and civil law family) and the family of socialist laws developed after the October Revolution in former USSR. Although the laws in mainland China is greatly influenced by civil law family, it belongs undoubtedly to the family of socialist laws with respect to the economic basis, nature of class and basic features.

Regarding the legal family, the legal system of laws of unitary country usually only belongs to one legal family as illustrated by the fact that the Chinese system of laws implementing the “One Country, Two Systems” policy belongs to the family of socialist laws. However, after the implementation of the “One Country, Two Systems” policy, there exists within the Chinese system of laws the laws of common law family and civil law family besides the laws of socialist law



family.

After the establishment of the Hong Kong SAR, the former laws in Kong Kong (common law, equity law, ordinances, subordinate legislation and customary laws) which were allowed to remain belong to common law family. After the establishment of the Macao SAR, the former laws, ordinances, administrative regulations and other normative documents in Macao which were allowed to remain belong to civil law family. And in future the former laws of Taiwan which will be allowed to remain also belong to civil law family but with certain features of common law family, such as recognizing and paying attention to precedents.

Therefore, after the practice of the "One Country, Two Systems" policy, within the Chinese system of laws, there exists not only two systems of laws with different natures, but also laws which belong to three different families of law, which forms a new situation of "One Country, Two Systems of Laws and Three Families of Law". It is undoubtedly a significant feature of the Chinese system of laws.

Fourthly, there appears four different jurisdictions of law within the Chinese system of laws under the "One Country, Two Systems" policy, which will result in complex interregional conflicts of laws. Jurisdiction of laws refers to the area within one country which has unique system of laws. Interregional conflicts of laws usually refer to the conflicts of laws between different jurisdictions within one country. Such conflicts of laws mainly occur in federal countries.

China was formerly a unitary country with socialism practicing unitary system of laws with only one jurisdiction of laws, and there existed no interregional conflicts of laws. However, after the practice of the "One Country, Two Systems" policy, China has taken a complex unitary state structure, and the interregional conflicts of laws have taken place (and will continue) because four different jurisdictions of laws have been formed due to the respective unique systems of laws existing in the mainland China, Hong Kong, Macao and Taiwan.

The interregional conflicts of laws under the "One Country, Two Systems" policy are very complicated including interregional conflicts of laws between the same capitalist social systems (eg., conflicts between Hong Kong, Macao and Taiwan), the interregional conflicts of laws between different social systems (such as conflicts of laws between mainland China and Hong Kong, Macao and Taiwan) and the conflicts of laws between different families of law. Thus, the interregional conflicts of laws under the "One Country, Two Systems" policy are very special, very complicated interregional conflicts of laws within one unitary country, which are different from those within federal countries. The interregional conflicts of laws within federal countries are usually conflicts of laws between the same social systems. Therefore, the interregional conflicts of laws and the respective judicial assistance under the "One Country, Two Systems" policy have enriched the contents of Marxist jurisprudence. How should we resolve such special interregional conflicts of laws? It still needs to be extensively discussed by the legal scholars and practitioners of law.

#### **IV. The proposal of plate-like large system of laws should not be adopted**

According to an article of Weng Qiyin, "after 1997 and 1999, when the systems of laws in Hong Kong and Macao with their respective characteristics were included into the Chinese system of laws, the general structure of Chinese system of laws definitely changed, into a plate-like structure with the system in mainland as the major plate and the systems in Hong Kong and Macao

as other two plates... After Taiwan returns to motherland and becomes a SAR, the current laws in Taiwan which will basically remain will be included into the Chinese system of laws as the second largest plate.”<sup>11</sup> It is not a very bad idea to regard such proposal of plate-like large system of laws (or “plate-like system of laws”) as a vivid metaphor illustrating that the Chinese system of laws under the “One Country, Two Systems” policy is an integrated whole composed of 4 “plates” of the mainland China laws, the Hong Kong laws, the Macao laws and the Taiwan laws. However, in scientific sense, the plate-like large system of laws should not be adopted as a new concept in Chinese jurisprudence, the reasons are as follows:

Firstly, from the political perspective, the primary element of the “One Country, Two Systems” policy is “One Country”, which refers to sovereignty and reunification of our country, without such essential issue and premise, there is no need to discuss other issues. The secondary element is “Two Systems”, that is the coexistence of both socialism and capitalism (including two legal systems) within the sovereign territory of the PRC. The “Two Systems” are not two parallel social systems, nor two opposite political entities; instead, socialism and capitalism support each other and develop mutually with the socialism in the mainland China as the major part and the guarantee of the Constitution. The article of Weng Qiyin also emphasizes “One Country” while taking “Two Systems” into account. But such proposal of the “plate-like large system of laws” itself cannot properly describe the above correct thoughts. Literally, “plate-like” is put forward before “large system of laws”, which easily leads to the misunderstanding that the “four laws” (“Two Systems”) is primary and the “large system of laws” (“One Country”) is secondary. The author of this article believes that “large Chinese system of laws” is a better proposed concept which better describes the priority of “One Country” and “Two Systems”.

Secondly, from the perspective of jurisprudence, the concept of system of laws should first reflect the inherent unification and mutual harmonization of current different laws within one country while reflecting their differences. The system of laws shouldn’t be regarded as the simple addition of different parts of laws. Further, parts are parts of the whole, they are revealed and defined on the basis of analyzing the objective process of social development. The important thing is to grasp the objective connection between the parts and the relationship of their interdependence. So, all parts of laws should be inherently harmonious.<sup>12</sup> The “plate-like large system of laws” could be easily misunderstood as the large Chinese system of laws under the “One Country, Two Systems” policy being a simple patchwork of four “plates” of laws in the mainland China, Hong Kong, Macao and Taiwan. Although it is stated in the article of Weng Qiyin that the four “plates” have their respective systems but are closely integrated into an integrated parent system of laws by the Constitution and the Basic Laws of the SARs, it is still a problem that such stiff idea of “plate-like” separates mechanically the systems of laws which are inherently connected with each other despite the confirmation that Chinese system of laws under the “One Country, Two Systems” policy is an integrated system of laws. The author believes that the replacement of “plate-like large system of laws” by “the large Chinese system of laws” could avoid the possible misunderstanding and is clear and definite.

Thirdly, from the perspective of category, category is the way of thinking which reflects the essential relation between objective matters, and is the basic concept in every field of knowledge. It is the result of historic development of man’s knowledge, and will be gradually enriched and more accurate with the development of social practice and scientific research. After the realization of the “One Country, Two Systems” principle, there appeared some new categories in the field of Chinese

legal science. However, it is not scientific to regard the "plate-like large system of laws" as a new category of Chinese legal science because it is uncertain, and can be understood as both the Chinese system of laws under the "One Country, Two Systems" policy and the system of laws of certain federal countries. Instead, the concept of "large Chinese system of laws" (please note the wording "large") is distinguished from both the system of laws of any foreign country and the Chinese system of laws in traditional sense. It refers specifically to the system of laws under the "One Country, Two Systems" policy with unique structure and innovative contents, with certainty and Chinese characteristics. Therefore, it can be a new category of legal science.

The society is developing and the time is heading forward, the successful practice of the "One Country, Two Systems" policy has bring deep changes to the concept of the system of laws. At the same time, it will also have significant impact on the traditional basic concepts of legal science and theoretical problems (such as the nature of law, the form of law, interpretation of laws, legislation and administration of justice). Such new changes should be discussed and generalized by legal scholars in theory so as to revitalize the jurisprudence under the new historical condition and to make the tree of jurisprudence more flourishing.

## Notes:

- <sup>1</sup> *Encyclopedia of China (Volume of Legal Study)* (1984). Beijing: Encyclopedia of China Publishing House. 84.
- <sup>2</sup> Fundamental Policy for the State and People – An Interview with Xiang Chunyi (1993). *People's Daily*. 26<sup>th</sup> March 1993.
- <sup>3</sup> Zhou Yongkun and et al. (1994). *Jurisprudence: A Discussion in the Context of Market Economy*. Nanjing: Nanjing University Press. 273.
- <sup>4</sup> *Ibid.*, 275.
- <sup>5</sup> Li Lin (2011). Establishment of Socialist Legal System with Chinese Characteristics and Its Significance to the Rule of Law. *People's Daily*. 21<sup>st</sup> February 2011.
- <sup>6</sup> Xiao Weiyun (Ed.) (1990). *One Country, Two Systems and Hong Kong's Basic Legal System*. Beijing: Peking University Press. 2.
- <sup>7</sup> Sun Guohua (Ed.) (1995). *Jurisprudence*. Beijing: Law Press. 289.
- <sup>8</sup> *Ibid.*
- <sup>9</sup> Deng Xiaoping (1997). *A Selection of Important Documents on One Country, Two Systems*. Beijing: Central Party Literature Press. 13.
- <sup>10</sup> *Ibid.*
- <sup>11</sup> Weng Qiyin (1991). One Country, Two Laws and a Legal System with Several Components. *Law Science*. Vol. 8. 14-19, 9.
- <sup>12</sup> Sun Guohua (Ed.) (1987). *Basic Theory of Law*. Beijing: China Renmin University Press. 359.