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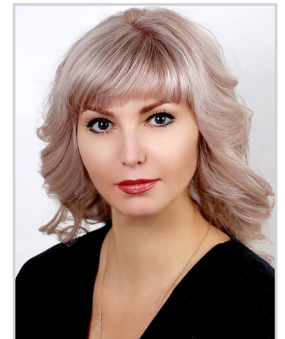
Kostyantyn Chaplynskiy
D.Sc. (Law), Professor, Head,
Department of Forensics and Pre-medical Training,
Dnipropetrovsk State University of Internal Affairs
26 Gagarin Ave., Dnipro, 49005, Ukraine
chaplynski@ukr.net
ORCID ID: <https://orcid.org/0000-0002-9922-3743>



Oleksandr Sydorov
PhD (Economics), Vice-Rector,
Dnipropetrovsk State University of Internal Affairs
26 Gagarin Ave., Dnipro, 49005, Ukraine
sydorov379@ukr.net
ORCID ID: <https://orcid.org/0000-0003-3923-6611>



Dmytro Shapovalov
Ph.D. (Medicine), Honored Medical Doctor of Ukraine,
Associate Professor of the Department of Forensics and Pre-medical Training,
Dnipropetrovsk State University of Internal Affairs
26 Gagarin Ave., Dnipro, 49005, Ukraine
shapovalovdmytro2020@gmail.com
ORCID ID: <https://orcid.org/0000-0002-1721-5150>



Olena Antoniuk
Ph.D. (Law),
Associate Professor of the Department of Forensics and Pre-medical Training,
Dnipropetrovsk State University of Internal Affairs
26 Gagarin Ave., Dnipro, 49005, Ukraine
1010sprava@gmail.com
ORCID ID: <https://orcid.org/0000-0001-6497-3061>

Interaction between economy and law through the example of China: from the retrospective to the development prospect. A critical analysis and comparison with developed democracies

Abstract. It is generally considered that the keystone of successful economic development of the state is its effective legal system with its priority dwelling upon protection of human rights. However, is this formula operational in the case of China with its authoritarian political regime for which the fundamental law is the will of the party leader?

The article investigates how the transformation of the legal system of China has been progressing over the past seventy years and how these processes correlate with the reforms in the economy. Profound cause and effect relations between mental reference points of the Chinese people and the «fragility» of the institution of law in this country have been revealed. The paper presents the results of the analysis conducted in relation to the indicators of socio-economic progress and the rule of law within the country in comparison with similar indicators of nine most successful countries in the world. It is proven that the formal law in China serves as a mere instrument for a farsighted, authoritarian and rigidly hierarchical political system which uses economic levers with the purpose of achieving ambitious goals of conquering the entire world.

Keywords: Interrelation between Law and Economics; China; Priority of the Morality over the Law; Authoritarianism; Totalitarianism; Hybrid Society

JEL Classification: F63; K14; K33; O53; P27

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Чаплинський К. О.

доктор юридичних наук, професор, завідувач, кафедра криміналістики та домедичної підготовки, Дніпропетровський державний університет внутрішніх справ, Дніпро, Україна

Сидоров О. А.

кандидат економічних наук, проректор, Дніпропетровський державний університет внутрішніх справ, Дніпро, Україна

Шапвалов Д. О.

кандидат медичних наук, Заслужений лікар України, доцент кафедри криміналістики та домедичної підготовки, Дніпропетровський державний університет внутрішніх справ, Дніпро, Україна

Антонюк О. В.

кандидат юридичних наук, доцент кафедри криміналістики та домедичної підготовки, Дніпропетровський державний університет внутрішніх справ, Дніпро, Україна

Взаємодія економіки і права на прикладі Китаю: від ретроспективи до перспективи розвитку. Критичний аналіз і порівняння з розвинутими демократіями

Анотація. Прийнято вважати, що запорукою успішного економічного розвитку держави є ефективна правова система, що своїм пріоритетом має захист прав людини. Проте чи діє ця «формула» у випадку Китаю з його авторитарним режимом, для якого основний закон – воля партійного лідера?

У статті досліджено, як відбувалася трансформація правової системи Китаю за останні сімдесят років, а також як ці процеси співвідносилися із реформами у галузі економіки. Виявлено глибинні причинно-наслідкові зв'язки між ментальними орієнтирами китайців і «крихкістю» інституту права у цій країні. Представлено результати аналізу показників соціально-економічного прогресу й верховенства права у країні в порівнянні з аналогічними показниками дев'яти найбільш успішних країн світу. Доведено, що формальні закони у Китаї є інструментом для далекоглядної, авторитарної та жорстко ієрархізованої політичної системи, яка використовує економічні важелі для досягнення амбітних цілей підкорення світу.

Ключові слова: взаємозв'язок права й економіки; Китай; пріоритет моралі над законом; авторитаризм; тоталітаризм; гібридне суспільство.

Чаплинский К. О.

доктор юридических наук, профессор, заведующий, кафедра криминалистики и домедицинской подготовки, Днепропетровский государственный университет внутренних дел, Днепр, Украина

Сидоров А. А.

кандидат экономических наук, проректор, Днепропетровский государственный университет внутренних дел, Днепр, Украина

Шапвалов Д. А.

кандидат медицинских наук, Заслуженный врач Украины, доцент кафедры криминалистики и домедицинской подготовки, Днепропетровский государственный университет внутренних дел, Днепр, Украина

Антонюк Е. В.

кандидат юридических наук, доцент кафедры криминалистики и домедицинской подготовки, Днепропетровский государственный университет внутренних дел, Днепр, Украина

Взаимодействие экономики и права на примере Китая: от ретроспективы к перспективе развития. Критический анализ и сравнение с развитыми демократиями

Аннотация. Общепринятым в научных кругах является мнение о непосредственной зависимости успешного экономического развития государства от эффективной правовой системы, ориентированной на защиту основополагающих прав и свобод человека. Насколько действительна эта «формула» относительно Китая с его авторитарным режимом, основной закон для которого – воля партийного лидера? В статье исследуется, как за последние семьдесят лет происходила трансформация правовой системы Китая, и как эти процессы соотносились с экономическими реформами. Выявлены глубинные причинно-следственные связи между ментальными ориентирами китайцев и «хрупкостью» института права в этой стране. Установлено, что присущее современному Китаю превалирование партийных решений над формальными нормами есть ни чем иным, как данью многовековой традиции почитания правителей, воплощенных в индивидуальном либо коллективном субъектах. Определяющую роль в успехе китайской экономики в настоящем времени сыграл «продукт» прошлого – менталитет нации, в котором мораль главенствует над законом, вера в превосходство нации и её уникальный путь является непреложной, а степень проявления коллективизма – беспрецедентной на фоне других государств. Сопоставление показателей социально-экономического и правового развития в КНР с аналогичными показателями девяти наиболее успешных стран мира позволило выявить разительное несоответствие первых общепринятым для развитых государств корреляциям верховенства права и роста уровня благополучия. Доказано, что формальные законы в Китае являются инструментом для дальновидной, авторитарной и жестко иерархизированной политической системы, которая

задействует все возможные экономические рычаги влияния для достижения амбициозных целей покорения мира. В то же время безудержный национальный эгоизм, за которым скрывается «воля к власти» мирового масштаба руководства страны, вполне может обернуться для Китая, с его гибридным общественным устройством, крахом. О том, каковы предпосылки и перспективы такого развития событий, и пойдет речь в данной статье.

Ключевые слова: взаимосвязь права и экономики; Китай; приоритет морали над законом; авторитаризм; тоталитаризм; гибридное общество.

1. Introduction

Searching for a point of convergence and identifying the groundwork for constructive interaction between legal and economic institutions is a topical objective for both the economic and the legal sectors. The law serves as a means of self-regulation of the economy, also it provides legally ensured freedom of production. The interdependence of law and economics is axiomatic: in a number of ways legal institutions are the produce of the economic being, while legal norms establish the rules and requirements for economic entities and their observance becomes the cornerstone for successful development of the state.

The way of negating the legal regulators of the economy in favour of an individual will of a ruler or a collective will of a political party proves to be *a priori* destructive which is asserted by numerous facts of collapse of once powerful empires. The contemporary history boasts an entire host of leaders which led their countries to collapse, economic decline and irremediable poverty: Robert Mugabe in Zimbabwe, Nicolás Maduro in Venezuela, Abdel Fattah el-Sisi in Egypt, Omar al-Bashir in Sudan, Teodoro Obiang Nguema Mbasogo in Equatorial Guinea and others.

At the opposite paradigm pole are the developed states governed by the rule of law where the supremacy of law is institutionalized at the level of public consciousness and is an indispensable constituent of the national character. Even a superficial analysis of correlation between the law and the economy in the societies of such type allows reckoning them among the ranks of wealthy countries.

At the same time a consistent formula such as «the rule of law and human rights as the keystone of economic development» appears to be faulty in the case of China. Indeed, the state of Chinese economy in the 21st century is not in the slightest associated with the decline and every year the country steadily rises higher in various ratings of the most developed countries in the world (in 2020 China ranked second in «Ranking the Richest Countries in the World» (Investopedia, 2020) being surpassed only by the USA). Furthermore, China does not belong to the rogue states. On the contrary, the government of the People's Republic of China cannot complain about the shortfall of international partners among the leaders of top democratic states. The world is offered with an image of China as an open for cooperation, amiable and strong partner, whereas in its internal policy it is increasingly spiraling downwards into strict autocracy.

The supremacy of law and compliance of laws to international standards are the premises incompatible with the authoritarian state policy pursued by the government of the People's Republic of China. The question is nonetheless whether China is the so called «exception from the rule» or, by its own example, it denies the universally accepted claim about the direct dependence of economic advancement of the developed legal system which aims to protect the individual and the property? Perhaps, the PRC managed to combine the non-combinable: the authoritarian regime, with a governing law being the will of the party leader, and the liberalization of economy, its increasing technological and innovation level while preserving the extensive pattern of development.

Thence, another crucial issue ensues with regard to a possible scenario where this country attains global leadership which would ultimately suggest the victory of the authoritarian paradigm of social development over the democratic one. In reality, there are multiple variations possible and the «Chinese card» in the global pack still remains the Joker: in various conditions it can transform into any card. The presented article attempts to substantiate and prove that the evolution of the economy with simultaneous disregard for the law as a system for protection of an individual and a property is a temporary phenomenon. Correspondingly, within the framework of the presented paper the forecasts with regard to China's development in the upcoming decades have been developed on the basis of analyzing weak and strong aspects of the Chinese model of development. We are convinced and will be presenting the conclusive evidence to prove that the PRC will not manage to become a full-fledged leader in the global arena in the nearest time not only due to its

susceptibility in the sphere of democratic rights and freedoms. Due to its state structure, China is not capable of fulfilling the functions of a leader which at present still remain the prerogative of the USA - ideology, military, innovation, currency, etc. Meanwhile, a change of regime in the PRC depends not only on institutional and legal transformations: profound transformations at the level of public consciousness are requisite, which would imply a departure from a collectivist paradigm and actualizing the principles of individualism.

2. Brief Literature Review

Peculiarities of relationships between law and economics, extents of state and legal intervention into the economy have been investigated within the framework of economic theories such as: economic liberalism and free market economics (F. A. Hayek, M. Friedman, J. Hicks); institutional economics (T. Veblen, J. Commons, J. Galbraith); regulated capitalism (R. Harrod, J. Keynes). For instance, J. Commons attributed a key role in economic relations to the law which found its manifestation in the bargaining theory. Studying the court practice, he reached a conclusion that an independent judicial system through its rulings and judgements in specific legal cases is capable of exercising control over the economy. Commons was convinced that economic contradictions can be solved with the help of a legal agreement (Commons, 2012).

After World War II, a range of issues concerning the revival of western economies in inextricable connection with the improvement of legal systems became increasingly relevant for a great many economic studies. For example, Ronald Coase asserted that uncertainty in the sphere of property rights will lead to high transaction costs, hence will cause a slowdown in economic growth (Coase, 1960).

A particular interest in interrelation between the legal and the economic systems is evoked by the theory of institutions by D. North. He proved that within closed societies the law is nothing more than an instrument which elites utilize to obtain privileges and control over the state. Correspondingly, there exists no distinction between law and politics therein. Conversely, the open form of government inherent in liberal democracies has the rule of law above everything. The shortcoming of North's theory is its focus on the conditions of successful market economy while legal institutions and their connection with the economy in developing countries are largely overlooked. It is stipulated that the elites in those countries would eventually acknowledge the implementation of an open legal system as an effective means in competitive activity or citizens would become so educated as to address international institutions for help in creating such open institutions (North, 1990). Such an optimistic standpoint is not shared by a number of contemporary scholars, in particular J. Faundez. He emphasizes that North's works fail to respond to the question: how the transformation of law from a blunt political instrument into an institutional structure, which prioritizes the rule of law, would affect the economy (Faundez, 2016). The example of China in substantiating the correlation between law and economics has been addressed on multiple occasions at various times by the following researchers: Xu (2014) who pointed out systematic disregard by the leadership of the state for legal regulatory measures in economy with the purpose of achieving tremendous economic growth that would otherwise prove to be short-dated; Wen & Zhao (2017) examined the side effects of the legal borrowing, particular in the sphere of economy for a unique Chinese socio-cultural environment and emphasized the necessity of taking into consideration the peculiarities of both the donor and the recipient countries.

In his work «China's long march toward rule of law: Rule of law and economic development» Peerenboom (2002) maintains that ensuring the rule of law in the process of state-building must be regarded as a necessary stage on the path to democratization. Consequently, the legal tagline - *youfa keyi* (there must be law to rely on), *youfa bi yi* (where there are laws, they must be followed), *zhifa bi yan* (laws must be strictly enforced), *weifa bi jiu* (violations of law must be corrected) - approved by the Communist Party of China in 1978 may signal the willingness of the country's leadership to uphold the rule of law. Hence, in R. Peerenboom's logic, the change of autocracy into democracy in this country is inherently possible. It is our conviction that a single-party socialist regime can theoretically be correlated with an efficient legal system when it concerns the observance of current laws and harsh punishment for their violation, but it definitely cannot be coupled with the liberal democratic version of the rule of law.

The paper «The Autocrat's Moral-Legal Dilemma: Popular Morality and Legal Institutions in China» by Ding & Javed (2020) proved to be of considerable interest for our research. The authors claim that authoritarian regimes seek to professionalize their legal systems for the purpose of

optimizing administration systems. At the same time, while quasi-autonomous courts act in contradiction to generally accepted concepts of the good and the bad it may substantially undermine the confidence of citizens in the regime. In China, with its inherent mental focus primarily on the informal law, this served as a basis for the emergence of a moral and legal dilemma: how to ensure the development of law for the needs of economy and simultaneously satisfy the interests of people's justice.

To understand the course and the consequences of reforms in China in recent decades as well as the attitude of the Chinese to those reforms we referred to the book «Thirty Years of China's Reform» by Mengkui (2012). The works of the following contemporary researchers of economic and legal practices in China proved particularly helpful in preparing the presented paper, among them: Cho, (2014), Yifu Lin, (2014), Dickson, (2016), Tang, (2016), Wu & Chen, (2016), Hurst (2018), Pang, (2018), Brown, & Wu Tzu Hui, (2019), and Ross, Tunsjø, & Wang, (2020).

3. The purpose of the paper is to corroborate the veracity of the statement regarding a direct dependence of the economic development on the legal system that is effective and aimed at protecting people and property by taking into consideration the example of China.

4. Results

4.1. Specifics of the legal mentality of China: general overview

The legal system of the contemporary PRC is unique: it incorporates the customary (ancient) law, the traits of the socialist law with vestiges of the legal system of the USSR as well as attributes inherent in the Romano-Germanic (civil law) and the Anglo-American (common law) legal systems. A considerable impact on the nature of adopted regulatory legal acts and the legal science as a whole was exerted by the Soviet legal paradigm which was particularly palpable in the first decade after the formation of a new state in 1949. At the same time, even though in the current legislation of China there exists no direct reference to moral and ethical doctrines developed by Confucius and the legists, their determining influence upon the legal consciousness, legal culture of both legislators and regular citizens should be acknowledged. In relation to the latter, this can be traced in the efforts to keep distance from the legal institution and to follow in their behaviour primarily not the legal norms but the necessity to «save face», not to be condemned by the relatives and acquaintances and to conform to commonly accepted moral standards.

In the understanding of an average Chinese citizen the law is virtually always associated with the concept of punishment, the institution of legal responsibility. The Chinese legislation itself is rather harsh in its reaction to any kind of violation of legal norms. For any offences, even minor ones, the Chinese law punishes severely and immediately: capital punishment, life sentence, forfeiture of property and deprivation of political rights are widely practiced.

The institution of criminal responsibility is particularly developed in the PRC, with the institution of capital punishment being its centerpiece. In China, an old-established stratagem «stomp the grass to scare the snake» (打草驚蛇) - Dǎ cǎo jīng shé is widely recognized, according to which the punishment for a single person, albeit harsh, serves as a necessary preventive measure. It is not a mere coincidence that for a long time in China some of death sentences were publicly enforced at stadiums with the purpose to intimidate potential offenders. The concept of punitive nature of the Chinese law is dominant in the Chinese society and among Chinese legal professionals. It must be noted that within the mindset of the population of Asian countries (Japan, Vietnam, South Korea, Thailand, etc.) there exists a historically established positive attitude toward severe punishment for offenders as morally justified.

It must be noted that currently the PRC has 46 constituent elements of crime which provide for capital punishment and this constitutes 22 elements less than a decade ago. In 2011, the amendments to the Criminal Law of the People's Republic of China abolished the death penalty for 13 elements of crime, and in 2015 - for another 9 elements (mainly concerning smuggling of nuclear materials, arms and ammunition, counterfeit currency; obtaining funds by fraudulent activity; organization of prostitution and coerced involvement into prostitution; obstruction to the performance of official duties in the military sphere and others).

For the Chinese legal mentality, it is traditional to display a subjective approach to including particular wrongful acts into the list of offences or determining the severity of punishment for them.

Even the emergence of written laws did not change this provision inherent in the customary law under which the principal place in regulating the vital activity of the Chinese society was attributed to the decree of a highest official (up to the level of the ruler) or to the system of moral laws raised to the level of conventional, commonly accepted laws.

The foundation of this system is rigid hierarchization of the society and collectivism as a key principle of the public life. For instance, the hieroglyphic combination of the word «fraternity» is comprised of 3 characters (兄弟会 - Xiōngdì huì), with the first two of those denoting «the elder brother» and «the younger brother», hence evidencing that even the brotherhood for the Chinese is *a priori* based upon the subordination. Respect for elders as well as for those who occupy a higher rank in the social hierarchy is a keystone of harmonious society. According to the teachings of Confucius, created on the basis of «Heaven's Will», a harmonious society is a totality of communities of people with each of those functioning to their maximum potential within a social niche specifically designated for such community. The essential concept of such community is «xiào» - 孝顺 - a concept of filial love and piety, honoring elders, rulers. The state is a big family; the emperor's power («the Son of Heaven») derives from the father's power and the relations of the rulers and their subjects - from family relations where the younger depend on the elder.

In the meantime, such traits of the Chinese mindset as collectivism, social cohesion and discipline for a long period have been formed under the impact of various factors, among them the climate and the geographical location, patterns of household and relations of production. In particular, to combat natural disasters (floods, typhoons, droughts) joint efforts of thousands if not millions of people were necessary. Decisive for production was the principle of the group cultivation of land which stipulated coordination and readiness for unquestioned execution of the will commanded by the leader of process. An important role was played by the factor of the population size: the density of habitation and constant surrounding of an individual by multiple representatives of their own kind resulted in forcing out inner independence and individualism at the level of mindset. All of this was instrumental in suppressing the individual's «Ego», which is interpreted in philosophic teachings - Confucianism, Daoism, and Buddhism - as an obstacle to cognizing Dao, the true nature of reality, and development of collectivism.

Seclusion of China from other civilizations as a consequence of natural conditions contributed to unifying the nation and, at the same time, has for millennia been entrenching the division into «us and them» deeper within the Chinese consciousness. Another significant factor in the nation's isolationism was the Chinese writing system which was complicated for foreigners. In this way, within the conscience of the Chinese people a conviction has gradually formed that, due to their uniqueness, ancient origins, the overall model of civil coexistence distinct from their western counterparts, China is capable of living by its own particular rules.

Hence, the Chinese legal consciousness has a primordial distinctive priority of the morality over the law. V. Rybakov, a reputable researcher in Chinese traditional law, emphasizes that in contrast to many ancient societies (for instance, Rome), the laws in China have never been perceived as something sacred and indisputable, as a blessed gift of gods to mortals, as a conceptual super value. On the contrary, the public opinion initially counted them as the produce of non-Chinese, «barbaric nations» that know no shame or morality therefore forced to resort to constant violence through legally imposed prohibitions in an attempt to somehow improve their living. In the view of the scientist, the law and morality were regarded by the ancient Chinese society as a strife between two eternal elements Yin (female) and Yang (male), the fight between dark and light, passive and active, where the law is Yin and the morality is Yang. With that, the morality had always risen over the law and was the principal regulating force for relations within the society (Rybakov, 2015).

These very norms were built upon honoring the parents, the elders, the respect to nobility and allegiance to the ruler. In the epoch of Confucianism legal norms had not yet been singled out from the mass of religious and ethical norms, together forming an integral whole. Simultaneously, their role, compared to decrees and orders of the ruler or his circle of confidants and high-ranking officials, was secondary. Thus, the priority of the party's decisions over the law, fundamental role of political guidelines and directives of the Communist Part of China (CPC) in the matter of formation of legislation that exists in contemporary China is nothing else but a homage to the principle, inherent in the traditionalist Chinese society, of a supremacy of norms widely recognized within the society over the legislative practice. The distinction lies only in that currently the governing party

stays above the law, while formerly its place was taken by the emperor, the bureaucratic apparatus and the system of rules of behaviour in the society developed by Confucius. The society and the law are thus placed in subordination in relation to party directives for an undefined period.

From another perspective, the ruling political elite are compelled to independently solve exceptionally challenging objectives of the economic development of a country that is enormous in its population numbers and overall production output. The society is imposed with the executing role, not the role of active transformation of the reality, caused by the lack of political freedom. Recognizing that in the absence of elections the legitimacy of authority in the eyes of the people would be defined primarily by economic achievements the ruling elite is forced to rev up in this direction in order to prevent the growth in demand of citizens for a more active involvement into the state affairs. Such a demand is an in-depth reality, and it cannot be changed either by the nationalist propaganda of «the Chinese dream» or by optimistic slogans about defeating the poverty and vociferous reports on successful combat against corruption.

The Chinese government considers human rights as an existential threat, and the measures it takes in relation to its own citizens carry an existential threat to human rights and freedoms on a global scale. The Communist Party of China in its fear to lose its monopoly of power in the case of political liberalization has constructed an ultra-modern Orwellian network of total government surveillance and the Internet censorship for the purpose of exposing and suppressing any unauthorized criticism. Growing economic influence of China in the global arena is utilized by official Beijing to launch a major offensive against the global system of human rights and freedoms from the very beginning of its formation in the mid-20th century.

4.2. Transformation of the legal system and economic reforms in the contemporary history of China

Specific features of the legal system of the PRC lie in the fact that it incorporates not only the legislation of Mainland China but also the laws of special administrative regions (SAR) handed over to China at the end of the 1990s - Hong Kong and Macao. In accordance with the policy implemented by the country's leadership - «one country, two systems» (一国两制) - the legal systems functioning within these SARs are different from the mainland one. For instance, up until 2047, in the territory of Hong Kong a unique legal system will remain in effect which has incorporated the common law and the Great Qing Legal Code, as well as Hong Kong's own legislation and some of mainland China's provisions and norms of law-making currently in effect in this SAR. In Hong Kong, the common law system formed during the period of British colonial rule is still in effect. A similar situation is observed in Macao where up until 2049 an existing legal framework will be preserved with its foundation broadly based on the Portuguese law - both in the form of legal codes borrowed from the former metropole and in the form of laws adopted by this administrative region on the example of corresponding legislative acts of Portugal. It is illustrative that capital punishment was formally abolished in 1993 in Hong Kong and in 1996 in Macao despite being virtually not used in those SARs (the last death sentence up to that point was enforced in Hong Kong in 1966). In the PRC death penalty is an established practice, at the same time, the data regarding the number of sentences is not disclosed. It is highly likely this implies thousands of the executed.

Within the presented work it will be scrutinized how the transformation of the legal system in China has been taking place from the middle of the past century until the present and how these processes correlated with the reforms in the economic sphere.

In the first stage (1949-1966) foundations of the Chinese statehood and, consequently, of the legal system of the new China were laid. The first step by the authorities consisted in the elimination of the progressive Kuomintang legislation - the Complete Book of the Six Codes (or six branches of law) (六法全书) in February 1949. From then on, the legal system of the state was being formed under the influence of the Soviet legal paradigm: the first Constitution of the People's Republic of China, first laws of the PRC - all of these were developed and approved with direct involvement of Soviet specialists. Simultaneously, despite the intensifying legislative process, the country had not yet adopted a single codified legal act. Even the Criminal Code implemented in 1957 for experimental application had not been published anywhere and served only as a restricted instruction for judges and prosecutors. Correspondingly, there existed no integral legal system and the very process of formation of legal foundations was far from complete. Rights and freedoms of citizens enshrined in the Constitution of the People's Republic of China had not been implemented.

Similarly, not only the substantive law but also the procedural law was not codified which provided the authorities with broad possibility to use the current legislation for their own benefits.

With regard to the economy, during the first five-year plan (1953-1957) the Chinese authorities put an emphasis on industrialization, once again in the image and likeness of the Soviet example. The industrial production output over this period increased by 2.5 times. The construction of 428 high-capacity industrial enterprises was completed with other 109 finished partially. Such vitally important industrial sectors as aviation, automotive, machine-tool manufacturing, machine-building, defense and others were created virtually from scratch. In 1958, under the pressure from Mao Zedong and his adherents, the national government adopted a new campaign that was entitled the policy of the «Three Red Banners»: a new general line, the «Great Leap Forward» and people's communes. Its objective became the fastest possible transition to communism and adoption of such forms of social structure that would enable to achieve unparalleled production efficiency. However, this campaign proved unsuccessful: the system of distribution led to an arrested development, while the production output in agricultural and industrial sectors declined dramatically. In the 1960s, the country was struck by the famine in consequence of which the population size reduced significantly. Despite the fact that to resolve the situation the government launched the nationwide programme aimed at rehabilitation of private households and the market, combating income disparity, reduction in the number of communes, followed by a new programme of «Four Modernizations» (agriculture, industry, defense, and science and technology) launched in 1964, the economy once again plunged into chaos in the wake of the «Cultural Revolution» initiated by Mao Zedong in 1966.

In the second stage (1966-1976) of formation of the legal system of the PRC virtually no legislative acts were adopted (the 1975 Constitution was of a purely declarative nature) followed by a matter-of-fact elimination of the constitutional system of government authorities, statutory bodies of the CPP and civil organizations. At that time, Mao Zedong conducts the political purge of «reactionaries» among the CPP with the purpose of restoring the prevalence of ideology over economy as well as the assertion of the communist ideals of equality. In the aftermath of the «Cultural Revolution» the political system of the PRC based upon the 1954 Constitution was practically decimated, thousands of progressively minded members of the army, law-enforcement agencies, state and party apparatus, culture and education were subject to repressions. Violent reprisals in «struggle sessions» with the participation of tens of thousands of spectators became a routine happening. The absence of process and law became characteristic of such staged trials. Chaos and disorder reigned supreme across the country while the already destroyed government authorities were incapable of taking control over the situation. Everywhere in public places it was common to place «guilty verdicts» - *dazibao* (hand-written big-character posters) in which various categories of citizens were accused of revisionism and counter-revolutionary activities. Shortly after the campaign assumed uncontrollable nature and even required the interference of the People's Liberation Army in order to support the authority of the newly formed provisional government. Hence, the very existence and operation of a legal system in China in this particular period was out of question.

After the conclusion of the «Cultural revolution», the death of Mao Zedong (1976) and the arrest of its principal initiators (the «Gang of Four») the legal system of the PRC entered the third stage (1976-2001) of its development. Its conception of ideology was determined as a strict compliance with law and discipline, unavailability of punishment for violation of laws. The Chinese law began to acquire its current form since the end of 1978 when China took the path of fundamental economic transformations. Having refused the priority of the class struggle in favour of economic development and placing the objective of production development to the foreground, the Chinese government authorities seemed to have eliminated every obstacle on its way to progressive development of the country. A collective leadership of Deng Xiaoping shaped up with the participation of Hu Yaobang as a person responsible for party affairs and Zhao Ziyang in the capacity of the head of government. The political programme foresaw the streamlining of the party and state bureaucratic system, economic modernization, implementation of market mechanisms, the establishment of socialism with a specific Chinese context, opening up the economy to foreign trade and investments.

The establishment of the legal system of the PRC after the «Cultural Revolution» is closely linked with the adoption of the new Constitution in 1978. Despite the fact that it remained in force only until 1982, its significance for legislative process lay, primarily, in the trigger effect.

An entire range of fundamental legal documents entered into force, without which reforming the country would be rendered impossible. 70% of those were aimed at regulating the economic sphere. Alongside economically-oriented legislative acts, for the first time from the inception of the PRC the Criminal Code and the Criminal Procedure Code (1979) were adopted with the further enactment of the Organic Law of the People's Courts, the Organic Law of the People's Procuratorates, Provisional Regulations on Lawyers and the Interim Regulation on Public Notary in the period of 1979-1982. It must be emphasized that economic levers nonetheless always proved determinative for the legislative activity during this period. Since the beginning of the 1990s its positive outcomes became evident: the GDP growth rate amounted to 12% which was 4 times higher than the corresponding indicators of the previous decade. Simultaneously, negative trends became apparent: a high level of inflation, growth of social and regional disparity in income distribution (specifically between coastal and mainland regions), rapid growth in the crime and corruption rates.

The PRC's accession to the WTO in 2001 marked the new fourth stage (2001-2010) in the formation of the legal system. Throughout ten years after joining the WTO a range of laws were enacted in the direction of protecting intellectual property rights, in investment, taxation, banking and entrepreneurial sectors, in the sphere of combating money laundering, etc. Significant changes were implemented not only in the substantive law, but also the procedural law of China.

During the fifth stage (2011-2019), a considerable number of legal documents was enacted having caused repercussions both within the country and internationally. Among them are the Exit and Entry Administration Law (2012), the Mental Health Law (2012), the Counter-espionage Law (2014), the Counterterrorism Law (2015), the Anti-corruption Law (2015) and the Nuclear Safety Law (2017). The mentioned counterterrorism law presents a matter of heated controversy to this date. It obliged the telecommunication companies to provide the relevant authorities with information encryption codes and user passwords. The US leadership severely criticized this legislative initiative emphasizing that such a law is aimed at supplying the government with sensitive personal data.

The state of anti-corruption activity in China, which gained momentum after the promulgation of the corresponding law, deserves particular attention. In the five years since its enactment, thousands of government officials and several dozen of ministers and governors were convicted. Within the scope of the anti-corruption «Sky Net» operation at the end of 2019, over 7 thousand corrupt officials living as overseas fugitives were arrested and repatriated.

In general, over the past years the authorities of the PRC largely employ legal instruments to «tighten the screws» more and more in an attempt to maintain the intended rate of economic development. This, in its turn, becomes increasingly complicated taking into account internal contradictions (improvement of living standard led to the emergence of individuals dissatisfied with the party's direction and oriented towards the West), as well as the confrontation between the USA and China continuing since 2018 when D. Trump signed a Presidential Memorandum targeting China's economic aggression. At the beginning of 2020, both sides took steps in the direction of conflict de-escalation. However, the COVID-19 pandemic which started in December 2019 in the Chinese province of Hubei provoked a significant downturn in economic activity in the PRC and all around the globe.

Currently, the sixth stage of transformation of the Chinese legal system is ongoing, being to a large extent stipulated by the consequences of the COVID-19 pandemic. A defining feature of this legal system is the enhancement of the dichotomy: on the one hand, the priority remains with the traditional perception of the law with its foundations resting upon moral principles, while, on the other hand, it is forced to assimilate with the Anglo-American common law which is a natural consequence of the global market economy.

The COVID-19 pandemic came as a shock for the predominantly export-oriented Chinese economy. According to the national statistics, the volume of foreign trade of the goods in the 1st quarter of 2020 decreased by 6.4% in annual terms. The negative balance of trade reduced by 80.6%; the exports shrank by 11.4% in annual terms, while the imports declined by 0.7%. However, already in the 3rd quarter the decline in indicators came to a halt with some of the numbers even having reached the pre-pandemic level. Furthermore, the leaders of the PRC managed to obtain certain geopolitical benefits from the situation with pandemic. National health-care systems of many countries, in particular those of the poorest African countries, are not capable of counteracting COVID-19 independently and depend significantly on the international

support which must be rendered immediately. While D. Trump suspended funding to the World Health Organization and even threatened to withdraw the US membership in this organization, Xi Jinping, his Chinese counterpart, demonstrated unprecedented generosity in granting aid. Such practice continues to this day. While the USA is currently reducing its involvement in international organizations - for instance, in particular UN agencies, - China, on the contrary, attempts to expand its participation that, considering its economic power, grants it increasing geopolitical weight.

4.3. Correlation between economics and law in China within the international dimension

To comprehend the extent of mutual interaction between economic and legal factors in the development of countries which currently rank among the top ten worldwide by the nominal GDP the analysis was conducted on the data from international indexes for the year 2020: the Index of Economic Freedom (EF), the Commitment to Development Index (CDI), the Legatum Prosperity Index™ (LPI), the Social Mobility Index (SMI), as well as the Rule of Law Index (RLI). The corresponding data are presented in Table 1.

By the volumes of GDP and GDP (PPP) China and the USA hold a firm lead being ranked in first two positions, moreover by GDP (PPP) in 2020 China managed to surpass a long-standing world leader - the United States of America. Other 8 countries that remain most successful according to the presented criteria display several times (3-9 times) lower indicators which can be attributed to, among other substantial reasons, their population numbers. It is nonetheless striking to juxtapose the first/second position of China with regard to the volumes of its GDP and GDP (PPP) with its 88th position in the Rule of Law Index, ranking 67 points lower than USA. The undisputed leaders among the investigated top ten countries in this Index are Germany (6th position) and Canada (9th position). They are ranked 4th/5th and 9th/15th by volumes of GDP / GDP (PPP), correspondingly. Canada is the only country on this list that manifests complete correlation between the indicators of the gross domestic product and observance of the rule of law.

According to the Index of Economic Freedom, China as well ranks last among the researched ten countries while in the overall standing it occupies the 103rd position, 6 times lower than the corresponding ranking of the USA.

Commitment to Development Index (CDI) evaluates the top 40 most influential countries of the world according to the policy they conduct in relation to less developed countries and comprises indicators against 7 criteria: development finance, investment, migration, trade, environment, security and technology. According to this Index, China only scored higher than India among the analyzed countries (35th and 37th position, accordingly). The indicators of China, according to this criterion (35), are almost two times worse than those of the USA (18), with the three leaders made

Table 1:
**Indicators of interdependence between economic and legal factors
(exemplified by top ten most successful countries in the world)**

Country	GDP 2020 (Nominal), USD billion		GDP (PPP), Int. USD billion		EF 2020	CDI 2020	LPI 2020	SMI 2020	RLI 2020	
	overall/rank		overall/rank		rank				overall/rank	
United States	20,807.27	1	20,807.27	2	17	18	18	27	0.72	21
China	15,222.16	2	24,162.44	1	103	35	54	45	0.48	88
Japan	4,910.58	3	5,236.14	4	30	21	19	15	0.78	15
Germany	3,780.55	4	4,454.50	5	27	5	8	11	0.84	6
United Kingdom	2,638.30	5	2,978.56	9	7	4	13	21	0.79	13
India	2,592.58	6	8,681.30	3	120	37	101	76	0.51	69
France	2,551.45	7	2,954.20	10	64	2	22	12	0.73	20
Italy	1,848.22	8	2,415.41	12	74	17	31	34	0.66	27
Canada	1,600.26	9	1,809.00	15	9	14	14	14	0.81	9
Republic of Korea	1,586.79	10	2,293.48	14	25	26	28	25	0.73	17

Source: Source: Compiled by the authors based on data as follows:
GDP and GDP (PPP):

World Economic Outlook Database (IMF): <http://statisticstimes.com/economy/projected-world-gdp-ranking.php>

EF: <https://www.heritage.org/index/ranking>

CDI: <https://www.cgdev.org/publication/commitment-development-index-2020>

LPI: <https://www.prosperity.com/rankings>

SMI: <http://reports.weforum.org/social-mobility-report-2020/social-mobility-rankings>

RLI: https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf

up of France (2), the United Kingdom (4) and Germany (5). With regard to the latter two, a high degree of correlation between their ranking according to CDI and GDP (4 to 5 and 5 to 4, correspondingly) is worth noting.

The Legatum Prosperity Index™ is the global assessment of wealth and wellbeing. The index has been compiled by the Legatum Institute think-tank since 2008. According to the 2020 data by the LPI, the indicator of the USA is three times higher than the one of China (18 and 54). Out of the studied ten countries, only India has worse ranking than China, while Germany ranks the best (8). In the report by the Legatum Prosperity Index™ for 2020, it is emphasized that China was the first country to suffer from COVID-19 and its reaction formed up the entire context of legal behaviour across the world during the pandemic. Withholding of information about the virus, restriction of human rights and freedoms, halt in the economic growth - all these became the defining features of the China's image in the conditions of the COVID-19 global onslaught (The principles of prosperity at a moment of global crisis, LPI, 2020).

Finally, according to the data of the Social Mobility Index, which benchmarks the impact of the socio-economic situation upon the individual's opportunities in life across 82 countries in the worlds, China is ranked 45th, considerably falling behind all the ten studied countries except India (76).

Out of 10 countries represented in our research China displayed the highest, compared to others, and an ultimately striking gap between the indicators of economic and legal development. The countries pertaining to the civil law (Germany, France) and the common law (the United Kingdom) systems possess the highest level of consistency according to these indicators. In the case of the USA, which belongs to the latter system, we can state a sufficient level of correlation between the rule of law and the economic growth. Nonetheless, the top position of this global hegemony by the volume of GDP and only the 21st in the Rule of Law Index leads to speculate on the profound social contradictions existing there.

With a more in-depth examination of the state of Chinese economy (not only by the GDP indicators) even more substantial gaps in this model are exposed: low indicators of the indexes of economic freedom, prosperity, commitment to development, social mobility and eventually the rule of law provide ample evidence thereof.

Overall, there exists much controversy with regard to the Chinese model of development with some of the researchers completely denying its very existence. Some reckon that it is a comprehensive system and can be used by the majority of developing countries. We deem it most relevant to follow the view of those analysts who regard it as a specific variation of namely the East Asian Model of economic development (Danju, Y. Maasoglu, & N. Maasoglu 2014; Hauge, 2019). This model initially found its realization in post-war Japan and was later implemented in the territories of the so-called Four Asian Tigers - South Korea, Taiwan, Singapore and Hong Kong. Subsequently, it was adopted by China and, to a particular extent, by ASEAN states (Malaysia, Thailand, Indonesia, the Philippines and later on - Vietnam, Laos and others).

In every country, this model manifests its own specificity. However, it also bears common attributes: export orientation of the economy, particularly of the industrial sector; the use of cheap labour; active attraction of foreign investments, high relative share of investments in the GDP (the savings ratio from 30% to 40% and higher); authoritarianism to a varied degree and/or a one-party system. The latter is perceived by investors as a guarantee of country's stability and hence serves as a favorable factor for attraction of foreign capital.

The model is efficient and with its different variations ensures rapid economic growth for prolonged periods of time. Due to the attraction of capital and technologies the overall technological level and labour productivity are on the rise. As consequence, the modernization of the country, rapid urbanization and gradual growth in living standards for the population are occurring. However, with the growth of both GDP per capita and domestic consumption the rate of economic growth in the Asian-model countries are decelerating. This paradoxical situation has a simple explanation to it: the richer the people become, the more demands they make on the authorities. The growth of living standards in the country naturally leads to an increasing self-esteem and aspirations towards independence. In this context, clashes within China are inevitable: the wealthy Chinese will eventually cease taking the existing authoritarian regime for granted. Only the respect towards the institution of power enrooted in the mindset of this nation over thousands of years of its history presently serves as a constraining factor. Nevertheless, the globalization has ruthlessly destroyed not only the economic and cultural boundaries

but also the established life concepts and traditional world-view maxims of modern people. In an open society the transformations at the level of a mindset are only a matter of time and China would hardly become an exception in this case.

The principal weak spot of the Chinese model is indeed the disregard for this particular law of globalization: the economy that is open for investments and trade is incompatible with an authoritarian rule and a single «control center» which results in violation of human rights and leveling down the role of law as a whole. Intensity and stability of economic development are possible when the production of wealth is based on the freedom of the economic entity and the state ensures the rule of law. In his work «The Road to Serfdom», F. A. Hayek wrote on freedom and property: «... the system of private property is the most important guarantee of freedom, not only for those who own property, but scarcely less for those who do not. « If all the means of production were vested in a single hand, whether it be nominally that of «society» as a whole, or that of a dictator, whoever exercises this control has complete power over us» (Hayek, 2007, p. 108).

The legal system of the PRC represents an explosive fusion of a traditional moral compass, regulatory norms of economy borrowed from the countries operating under common and civil law systems (without which the access of China to the international market would be impossible) and repressive legal instruments. It must be noted that the borrowings are mainly superficial: the country remains a traditionalist one despite numerous economic reforms over the last decades. Further to it, harsh and repressive nature of the law is stipulated not as much by the communist principles (they do not correlate with market-based transformations and individualism of the property-holders) but rather by the moral categories originating from an ancient Confucian canon. With regard to the «social control» implemented by the Chinese elites for the sake of their own safety, it serves as an illustrative example of how the state, bypassing every legal restriction, sacrifices the individual (with thousands of people dissenting to the regime) for the sake of the collective good - a fragile balance in the «Celestial Empire».

5. Conclusions

Among the factors of China's phenomenal economic takeoff, firstly, it stands to mention the concentration of the state apparatus and the society overall upon achieving success and growth. The country is seeing a literal fetishization of the development and the global economic leadership. With regard to other factors, it is worth noting incredibly high levels of investment (in the past 10 years this indicator has occasionally reached up to 50% of the GDP), a substantial inflow of foreign capital and an increase in labour productivity. As to the latter, the situation is not entirely as clear-cut and, in comparison to developed countries, China's labour productivity is still extremely low, however due to ongoing technological upgrading the dynamic of change in this regard is still overwhelming. The important resources for the Chinese miracle have also become: a) an enormous and for a long time inexhaustible market of cheap labour force and the so-called demographic dividend; b) substantial deposits of particular types of mineral resources (coal, iron ore, oil, rare-earth elements); c) the country's low-cost social policy which can be attributed to a relatively young demographic structure and disregard for the needs of the population on the part of the government. At the same time, the Chinese economy, despite its growing level of technology and innovations, generally preserves its extensive pattern of growth being overly reliant on exports and dependent on investments. With that, it still remains excessively resource- and energy-intensive and environmentally-polluting.

For all its ambitions China is unlikely to force the USA out of the first position among modern superpowers. An economic leader must have high GDP per capita, high labour productivity and wage rates. In these terms, China is considerably behind the USA. Furthermore, the economy of the USA, in contrast to the economy of China, has never been export-oriented.

Nevertheless, the largest obstacle on China's way towards global leadership is the lack of fully-formed respect, both at the mental and institutional levels, for the law as a principal regulator of economic relations, disregard for the Law in favor of an individual will of a «leader of nation» or a collective will of the party. The uniqueness of China lies in the hybrid nature of its state structure: a preternatural however temporarily operational blend of socialism and capitalism. Nonetheless, such model would ultimately become a trap for the state. China already has an internal conflict brewing, as evidenced by the situation with mass protests in Hong Kong. In May 2020, the National People's Congress of the People's Republic of China initiated the adoption of legislation on national security which would drastically extend the authority of Chinese intelligence agencies in

Hong Kong. Despite the restrictions due to the pandemic thousands of people took to the streets with protests against the actions of the Chinese government. In the long run, China may attain the «eradication of hostile foreign powers», however Hong Kong, having lost its self-sufficiency and autonomy, will as well lose its principal value for the sake of which the Chinese government is struggling with such a determination to control Hong Kong.

Such persecution of dissenters and «tightening the screws» will lead to estrangement from the West and, consequently, worsening of investment climate with the country and the subsequent outflow of capital which would invariably slow down the rates of economic growth. As a matter of fact, the Chinese miracle itself was made possible only due to the fact that at the end of the last century the government of the PRC accepted the «rules of the game» from western countries despite preserving and even strengthening of authoritarian regime, namely the common law and the civil law systems served as the foundation for forming the architectonics of economic relations in the contemporary world. The Western countries are in their own peculiar way a collective depository of key «rules of the game» for all major players in the global arena. These rules can neither be changed by the will of the Chinese Communist Party nor governed by it.

At the same time, in today's China the priority of decision of the party over the law, the fundamental role of political guidelines and directives of the CCP in the formation of legislation is nothing but a homage to a mindset inherent in the Chinese society which combined a primordial supremacy of the morality over the formal law, collectivism and loyalty to the rulers (embodied in an individual or a collective entity).

Presently, it becomes increasingly evident that the acceptance of the western legal paradigm for the sake of socio-economic developed declared by China is a fiction. In the international relations, including the climate accords, China is acting exclusively in its own economic interests. Moreover, its disregard for the ruling by a tribunal at the Permanent Court of Arbitration in the Hague with regard to the South China Sea conflict evidences that Beijing is prepared to ignore the international law.

In China itself formal laws serve as a mere instrument for a farsighted, authoritarian and rigidly hierarchical political system that manipulates the economy, as a whole, and particular economic institutions with the purpose of asserting its power in China and across the globe. Figuratively saying, the laws in the PRC have always been and still remain a «smokescreen» behind which the «will to power» of the country's leadership is successfully fulfilled. If the rule of law continues to be substituted for a diktat of the ruling establishment the economy of China with its hybrid social structure will increasingly resemble «a giant with feet of clay».

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