The General Theory of Law and Its Development in China

Lei Lei*

China University of Political Science and Law

Abstract: Study of the general theory of law, as an independent branch of legal research, originated in Germany in the mid to late 19th century, and thereafter became a widely propagated and well-developed subject in countries such as the UK and the US. Scholars from the Soviet Union combined the general theory of law with Marxist philosophy and adapted it from an analytical legal theory to a social legal theory. The inheritance and development of the general theory of law in China went through three stages. Specifically, from the 1950s to the early 1960s, the jurisprudence community fully adopted the legal theories promoted by the Soviet Union; from the early 1980s to the late 1990s, the studies reflected upon past theories and sought advancement; and from the late 1990s to present, research has adopted a more open and innovative approach. In addition, the philosophy of law and other interdisciplinary subjects have gradually become dominant research paradigms. A review and compilation based on the evolution of theories of legal relations showed that the study of the general theory of law in China is closely associated to the historical rate of progress of the practice of rule of law and jurisprudence in China. The overall framework of the research is deeply influenced by the model of "theories of the Soviet + civil-law prototypes". In addition, the research methods have evolved from investigations utilizing a single approach to processes combining various approaches. The general theory of law is far from a "relic of history," and corresponding in-depth research is recommended for future jurisprudence study in China.

Keywords: general theory of law, legal relations, social legal theory, analytical legal theory

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* Lei Lei, School of Law, China University of Political Science and Law.

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Correspondence concerning this article should be addressed to Lei Lei, School of Law, China University of Political Science and Law, Beijing. E-mail: leilei424211@126.com.

Over the past 70 years, research into jurisprudence in China has taken an eventful development path, as if traversing through the "Three Gorges Dam" of history, from full adoption of the theories of the Soviet Union, to difficulties and setbacks in application and even a destructive effect due to the political environment, to restoring development and re-learning theories from other countries, and finally to seeking theories and discourse regarding socialism with Chinese characteristics. Looking back on this process, an interesting phenomenon is uncovered, as an important part of jurisprudence, studies on the general theory of law, which was once an active area of study, appeared to be declining over time, at least within the jurisprudence community. The general theory of law, which is also known as "general jurisprudence" and "legal theory", refers to research into jurisprudence based on the fundamental legal concepts and general foundations (such as functions, principles, structures, and methods) (Liu, 2015, p. 9). From the 1950s to the late 1970s, research into the general theory of law represented almost the entire field of jurisprudence. The most representative manifestation was that, following the nationwide transformation of colleges and universities in 1952, fundamental theory-based courses and textbooks (both domestically compiled and edited or translated textbooks) from law schools in China were named "Theory of State and Law (or Legal Rights)." Since the 1980s and 1990s, research on the general theory of law underwent a new development course; however, challenges and impacts also gradually emerged.

This study aimed to explore and examine the origin of the general theory of law and its development in China over the past 70 years. In addition to the historical significance of corresponding research fields, which have been inseparable when reviewing the history of the development of jurisprudence in China, it can be concluded that the general theory of law remains important, and is a subject that requires renewed emphasis in order to construct a timeline of jurisprudence in the context of socialism with Chinese characteristics. Nevertheless, given that the general theory of law covers a wide range of fundamental legal concepts, a general review lacks in-depth analysis. For that reason, this study selected one of the most fundamental legal concepts, legal relations, as an example and used changes in corresponding theories to indirectly reflect the succession and development of the studies of the general theory of law in China. The choice of legal relations as an example was due to its fundamental position in the legal system.[①] In addition, compared to other concepts, legal relations can be said to be more representative of the history of the legal system in China as it was developed extensively both in the Soviet Union and in China, which was deeply influenced by the legal schools of the Soviet Union.

The structure of this study is as follows. First, the study introduces the origin of the research of the general theory of law in Germany and how it spread to the UK, the US, and the Soviet Union (Section 1). Next, the three stages of development of corresponding studies in China are reviewed. Specifically, in the first stage (from the 1950s to the early 1960s), the theories of the Soviet Union were fully

① As Albert Kocourek said, the relationship between the concepts of jural relations and jurisprudence is comparable to the relationship between the theory of gravitation to physics; while a jurist that does not perceive the existence of jural relations is similar to a barbarian that does not perceive the existence of gravity (See Albert Kocourek, Jural Relations, at iii, The Bobbs Merrill, 1927).

adopted by Chinese academia (Section 2); in the second stage (from the early 1980s to the late 1990s), Chinese academia demonstrated progress and achieved breakthroughs (Section 3); and in the third stage (from the late 1990s to the present), more open and innovative approaches have been adopted (Section 4). The patterns and characteristics of the development of the research are then summarized (Section 5), and conclusions are presented in the last section.

The Origin and Popularization of the Study of the General Theory of Law

The Origin of General Jurisprudence in Germany

General jurisprudence[①] originated in Germany in the mid to late 19th century as an independent branch of legal research. Although a large number of scholars involved in this research field tended to have varied viewpoints, they shared the common goal to develop a field of study that merged *Rechtsdogmatik* (legal dogmatics) and the traditional *Rechtsphilosophie* (philosophy of law). The emergence of the study of the general theory of law was inseparable from the rise of scientific ideas and the trend of studying law from a scientific approach. Studying law from a scientific approach required the elimination of metaphysics and the substantive values once applied to legal concepts. As a result, between the 18th and 19th centuries, the belief in *Vernunftrecht* (law of reason), equivalent to *Rechtsphilosophie* at the time, was challenged. Instead of using supra-positive and *a priori* principles to support positive law, scholars began to develop a scientific explanation of general jurisprudence oriented to fit positive law (Brockmöller, 1997, pp. 26-27). Furthermore, the scientific approach required systematicness and generality. Although *Rechtsdogmatik*, which emerged prior to the codification movement of continental Europe, was called "narrow legal science," *Rechtsdogmatik* alone was not sufficient to ensure the scientification of legal studies. As a method of interpretation, construction, and systematization of existing positive laws, *Rechtsdogmatik* was strongly inhibited by the positive laws of specific fields; hence, its only use was, at most, to explain and refine the fundamental concepts of the given branches of law and to construct their systemic relationships. However, the fundamental characteristic of science lies in the transcendence of systematicness and generality in a given field. Therefore, a general theory of the entire legal system, or even beyond a specific legal system, based on *Rechtsdogmatik*, was needed.

At the beginning of the 19th century, Niels Nikolaus Falck explored "general jurisprudence" from a disciplinary perspective, though he did not explicitly separate the concept from other legal disciplines. According to Falck, the goal of general jurisprudence was to recognize the universal and immutable elements that constituted the "pure scientific" part of law and inherent in positive laws and the nature of legal relations presupposed by legislation. He suggested that it was necessary

① In order to distinguish between different forms of research, in this paper, the terms "general jurisprudence" and "legal theory" are used to refer to the forms of study regarding the general theory of law in Germany, the UK, and the US; while the term "general theory of law" is used to refer to the specific form of study on the general theory of law that propagated in China through the Soviet Union.

to be rid of the influence of positive laws in order to ensure a free and rational environment for the development of law (Falck, 1819, pp. 15-16). Thereafter, historical jurists in the mid-19th century found the basis for the "scientification" of law in Roman law. They attempted to grasp a general proposition for the nature of law by studying how Roman law formed and developed. Roman law was used to determine the origin of the general structure, concepts, and principles needed for all laws. Legal science (general jurisprudence) was thus developed through the study of the essence of Roman law, whereby corresponding objects, systems, and methods were extracted and used as a framework for legal science. Studies of "legal relations" soon formed an important position within the conceptual system of law. Friedrich Karl Von Savigny was among the first that systematically elaborated on the concept of legal relations (*Rechtsbeziehungen*). In Volume 2 of *System des heutigen römischen Rechts I*, he discussed topics such as the nature and taxonomy of legal relations, man as the bearer of legal relations, emergence and elimination, and violation of legal relations. He put forward the classic definition which states that a legal relation is "a relationship between person and person, determined by a legal rule (*als eine Beziehung zwischen Person und Person, durch eine Rechtsregel bestimmt*)." He also claimed that all legal relations should be considered from substantive criteria (*stoff* [substance] or *Beziehung* [relation/connection]) and a formal principle (the legal definition of the substance), emphasizing that the rule of law had a deeper foundation (Savigny, 2010. pp. 9-10). Thereafter, Rudolf von Jhering developed an "anatomical" perspective of law ("*anatomische*" *Betrachtungsweise des Rechts*), analyzing its concepts and structures, which in turn greatly influenced the analytical school of jurisprudence (Brockmöller, p. 274).

Adolf Merkel, a student of Jhering, was the first to argue for a "general theory of law" (*allgemeine Rechtslehre*) as an independent field of study. In his paper "Über das Verhältnis der Rechtsphilosophie zur 'positiven' Rechtswissenschaft und zum allgemeinen Teil derselben" published in 1874, Merkel first conceptualized legal science as general jurisprudence and specific branches of legal science. The theoretical basis of general jurisprudence was to guide legal dogmatics toward general problems and concepts. General jurisprudence involved the study of higher-level concepts with legal significance beyond the limitations of specific branches of law, associated instead, to legal science as a whole (Merkel, 1874, p. 3 ff.). Furthermore, he classified general jurisprudence as consisting of laws (including their structure, classification, and formation), legal relations, applications of law, and legal science (Merkel, 1913, pp. 5-8). In his *Elemente der allgemeinen Rechtslehre* (1899), he conducted a more systematic study of the fundamental concepts of law, the state, commands, power, legal norms, justice, legal relations, and subjective law (rights), with an emphasis on the exploration of the concept of legal relations. Inheriting the definition of legal relations proposed by Savigny and applying it to the relation of right in rem, Merkel further defined legal relations as the relationship between the rightsholder and all other legal persons surrounding the given object, as the ownership granted by the law restricts the nonowners, rather the object itself (Merkel, 1899, p. 637). Moreover, he discussed the content of legal relations (the correspondence between rights and obligations) and suggested that rights represented positive acts within legal relations, while obligations represented negative acts; and

no rights or obligations exist that do not involve an opposing party, and *vice versa* (Merkel, pp. 634-636). In general, Merkel's legal theory was an integration of three traditional approaches: philosophy (especially the systematization of law), dogma (structural analysis of positive laws), and analysis (definition of concepts). His legal theory laid the foundation for the future development of general jurisprudence in Germany.

Scholars at the end of the 19th century and the beginning of the 20th century tended to either consider the task of general jurisprudence as specifying the formal conditions of law (Bierling, 1894, p. 14 ff.) or position it as the "formal philosophy of law" that covered forms of law such as legal epistemology, methodology, and logic (Bergbohm, 1973, pp. 57-58). Regardless, all scholars agreed that general jurisprudence dealt with the fundamental concepts of law. Many representative works were created during this period, including August Thon's *Rechtsnorm und subjectives Recht: Untersuchungen zur allgemeinen Rechtslehre* (1878), Karl Bergbohm's *Jurisprudenz und Rechtsphilosophie* (1892), Felix Somló's *Juristische Grundlehre* (1917), Ernst Bierling's *Zur Kritik der juristischen Grundbegriffe* (1877/1883) and *Juristische Prinzipienlehre* (1894-1917), and Hans Nawiasky's *allgemeine Rechtslehre* (1948). Thon and Bierling were among the earlier scholars who conducted research on the nature, classification, and relationship of rights and obligations (Thon, 1874, pp. 248-260; Bergbohm, pp. 145-183), though their analysis was not as refined as that of later scholars. Moreover, scholars had dissimilar understandings of the relationships among legal norms, rights, and obligations. Scholars from the traditional schools believed that rights should take precedence over obligations. However, others approached the subject from the perspective of legal norms and argued that obligations should take precedence over rights, as norms imply being duty-bound, which indicates obligation (Somló, 1917, p. 430). Other scholars asserted that both rights and obligations are legal norms, the only differences are that obligations are norms from the perspective of the obligor and rights are legal norms from the perspective of the obligee (Nawiasky, 1948, p. 156, 161, 167).

Two schools of thought played important roles in promoting the development of general jurisprudence. The first school was the study of the "*juristische Enzyklopädie*" (legal encyclopedia) that was popularized in the first half of the 19th century; especially that of the formal encyclopedia, *Wissenschaft der Wissenschaft*. The encyclopedia served as a comprehensive chronicle covering fundamental legal knowledge of all major branches of law (such as civil, criminal, and procedural law) usually including an overview or an introduction, the contents of which was essentially that of general jurisprudence (Brockmöller, pp. 177-182). The second school was the study of *allgemeine Staatslehre* (general theory of the state), which was popularized at a later period. Although general jurisprudence first appeared as a theory of private law, it was introduced into the study of *Staatsrecht* (constitutional law) by public-law scholars (such as Paul Laband and Georg Jellinek), following its emergence as an independent discipline. As a result, general jurisprudence became a discipline positioned above the main branches of law. Furthermore, the general theory of law that emerged from private law and the general theory of the state were merged into one concept by Hans Kelsen in his tour de force, *Reine Rechtslehre* (*Pure Theory of Law*) (1st edition published in 1934; and 2nd edition published in 1960).

The Propagation of the General Jurisprudence in the UK and the US

By the beginning of the 20th century, general jurisprudence had attracted the attention of jurists and civil law scholars across a number of countries such as France, Italy, Spain, and Portugal, who either adopted the German theories (especially those of Savigny), or developed theories through a contrarian approach, yielding abundant corresponding research. Influenced by the trend of scientific and empirical research, academia in the UK and the US also generated many representative works, such as J. W. Salmond's *Jurisprudence or the Theory of the Law* (1902), J. C. Gray's *The Nature and Sources of the Law* (1909), W.N. Hohfeld's *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (1913, 1917), and Albert Kocourek's *Jural Relations* (2nd Ed., 1927).

The origin of general jurisprudence in the UK and the US can be traced to Jeremy Bentham and John Austin, while Bentham's *Of Laws in General* (1872) can be regarded as the forerunner of research in this field.① *Of Laws in General* analyzed a range of fundamental legal concepts. Particularly, in the chapter "Aspects of a Law," he created a typology of four possible aspects, including command, non-command, prohibition, and permission which were later regarded as moral modalities of legal relations (Bentham, 2008, p. 126 ff.). John Austin's *The Province of Jurisprudence Determined* (1832) was the first work of its kind in the history of legal theory that distinguished systematically and in detail the different uses of the term "law" and restricted the research subject of jurisprudence to existing laws that were "set by men to men" (Austin, 2002, p. 13 ff.). Although in terms of the time, the aforementioned works were published earlier than those of Merkel, they only focused on a limited number of fundamental legal concepts and lacked a comprehensive and systematic structure (which also constituted the characteristics of research in general jurisprudence in the UK and the US). In addition, general jurisprudence was not considered as an independent discipline. Hence, they can be regarded as the "germ that seeded" general jurisprudence.

Salmond distinguished civil law studies as consisting of theoretical and practical jurisprudence, emphasizing that theoretical jurisprudence (general jurisprudence) was "the science of the first principles of the civil law". His seminal work focused on the analysis of legal sources, legal rights, personality, and freedom (Salmond, 1913, p. 3, 7, 117 ff.). Gray's book, however, analyzed fundamental legal concepts and their interconnections, with an emphasis on legal rights and obligations (contents of legal relations), while defining the various subjects of legal relations (Gray, 2012, p. 3, 8, 24 ff.).

However, in terms of theory in legal relations, Hohfeld was considerably more influential. In two extensive papers published in the 1910s, Hohfeld established two jural groups of legal relations ("opposites" and "correlatives") surrounding eight concepts ("right," "duty," "privilege," "no-right," "power," "liability," "immunity," and "disability"); this allowed the variety of potential legal relations to be analyzed accurately and comprehensively (Hohfeld, 2009, p. 28 ff.). On this basis, Kocourek

① It was believed that the book was completed in 1782, yet not published at that time. In 1945, Bentham's manuscript was carefully compiled, and his work was published for the first time under the name "*The Limits of Jurisprudence Defined*". In 1970, Herbert Hart re-edited and republished it under the name "*Of Laws in General*".

provided a comprehensive elaboration of legal relations. His work, which consisted of 20 chapters, covered legal relations from the perspective of terms, definitions, elements, classifications, and objects.[①] In addition, Kelsen published the English version of *General Theory of Law and State* (1945) following his migration to the US, in which his main viewpoints were highlighted. The book had extensive influence in the English-speaking academic community and related corresponding studies between continental European and the UK and the US. He defined the theme of a general theory of law as "the legal norms, their elements, their interrelations, the legal order as a whole, its structure, the relationships between different orders, and, finally the unity of the law in the plurality of positive legal orders" (Kelsen, 2017, pp. 19-20), while reducing concepts such as legal duty, legal responsibility, legal rights, competence, and legal persons to legal norms.

After the 1950s, British and American scholars of the Analytical School were extensively involved in the study of fundamental legal concepts, such as Hart's study of laws, as well as related concepts of orders, rules, and duties (Hart, 2018), and interpretation of responsibility (Hart, 1989). Joseph Raz's conceptual analysis of the legal system was considered extensively (Raz, 2003), as was Mac Cormick's typification analysis of legal competence and relations, legal relations, and objects (Cormick, 2019, pp. 171-228). In his five-volume work, *Jurisprudence*, Roscoe Pound, a representative of sociology of law, dedicated an entire chapter to "analysis of general juristic conceptions" such as rights, powers, freedom, duties and liabilities, persons, acts, and objects (Pound, 2007, pp. 31-413). These studies and works had a worldwide impact on legal studies.

In summary, research in general jurisprudence in continental Europe and the UK and the US had the following disciplinary attributes: (1) it was a normative discipline about positive law; (2) it involved an overview of law and legal science (*Rechtsdogmatik*); (3) the research subjects mainly involved fundamental legal concepts; (4) it was based on the form of structure research on positive law (contrary to traditional philosophy of law that emphasized ethical intent); and (5) it aimed to generalize and systematize legal knowledge (toward a scientific approach) (Lei, 2018, pp. 85-86). Thus, the analytical tradition of the general theory of law was born.

Studies of the General Theory of Law in the Soviet Union

Prior to the October Revolution in Russia, there were also numerous works on topics related to the general theory of law, such as S. A. Muromtsev's *Opredelenie i osnovnoe razdelenie prava* (*Definition and Primary Division of Law*) (1879), N. M. Korkunov's *Obŝaja teorija prava* (*General Theory of Law*) (1904), E. H. Trubeckoj's È*nciklopedija prava* (*Encyclopedia of Law*) (1906), and G. F. Shershenevich's *Общая теория права* (General Theory of Law) (4-volume edition, 1910-1912). In particular, Korkunov's theory was deeply influenced by traditional German theories. His work was translated

① See Albert Kocourek, *Jural Relations*, at iii, The Bobbs-Merrill, 1927, pp. 1-423. It is worth mentioning that the theories of Hohfeld and Kocourek also affected corresponding studies in contemporary China, although not extensively (see Shutang Yan's "Comment on Hohfeld's '*Fundamental Legal Conceptions*'; Kocourek's '*Jural Relations*', Wuhan University Social Sciences Quarterly, 1930, Issue 1). Half a century thereafter, when domestic scholars once again paid attention to Hohfeld's viewpoints, his ideas caused a profound impact (see following sections). Kocourek's theory, however, had no domestic influence at all.

into English and had a great impact in the US in the 1920s, facilitating exchanges between the two academic communities (Korkunov, 1922). These works provided a starting point for the study of the general theory of law in the Soviet Union to a varying degree; however, the country underwent revolutionary change thereafter.

Following the October Revolution, the general theory of law quickly became mainstream in jurisprudence research and the core theme in law education in the Soviet Union, leading to the publication of a large number of textbooks and monographs. The reasons for its rise to prominence are as follows. First, the Soviet Union legal scholars believed that their mission was to specify and clarify legal concepts by summarizing legal experiences from the socialist state; this involved the study of common legal problems from all aspects of Soviet law (Piontkovskiĭ, 1956, p. 48). During this shift, the concept of "legal relations" received unprecedented attention. From the perspective of the Soviet scholars, legal relations proved that a unique socialist legal science could exist as legal phenomena contrary to those of capitalism (Халфина, 1971, p. 26). Moreover, Marxist philosophy became an unquestionable orthodox theory in philosophy (of law), while Soviet jurists' responsibilities emphasized applying Marxist philosophy to each legal concept. The only freedom jurists had was to argue the proposition for the correct interpretation and application of Marxist principles. The most prominent manifestation of Marxism in research of the general theory of law lay in the following two aspects: First, the term "general theory of law" was replaced by "the (general) theory of state and law." Correspondingly, due to the state and law being regarded as a whole in Marxist theory, the theory of the state was expounded upon significantly more in the academic works of the period. The state is the product of class struggle, while law is the embodiment of the will of the ruling class; hence the state and law simultaneously emerge and disappear. For that reason, the theory of the state and law had common goals and corresponded when merged. Since there was no neutral methodology for the research of the state and law, political and legal tasks should be resolved simultaneously (Mapčenko, 2010, p. 6). Second, the fundamental content of the "general theory of the state and law" can be defined as the general law of the emergence and development of the state and law and corresponding functions. Particularly, the history of the theory of the state/law became the focus of research. The connection between the state and law, which had been generally ignored in the studies of the general jurisprudence in continental Europe, the UK, and the US, was founded upon historical materialism. Research into the general theory of law in the Soviet Union could thus be divided into three stages: from 1918 to 1937 (first stage), from 1938 to the beginning of the 1950s (second stage), and from the mid-1950s to the present (third stage).①

For the first stage, significance was shifted toward legal relations as Marx's statement of law being rooted in society. As Marx stated, "Society is not founded upon th law…On the contrary, the law must be founded upon society, it must express the common interests and needs of society."

① This differentiation method was adopted from Shu Guoying, Jural relations. [ed.] Yongfei Wang and Guicheng Zhang, Review and Evaluation of Jurisprudence Research in China, China University of Political Science and Law Press, 1992, p. 493-494. The period of the third stage in the Soviet Union was the first stage of research into a general theory of law in China; hence, the third stage is discussed in the next section.

"Neither legal relations nor political forms could be comprehended whether by themselves or on the basis of a so-called general development of the human mind, but on the contrary they originate in the material conditions of life." Therefore, each form of production creates its own classification of legal relations. Representative works such as Pēteris Stučka's *Revoljucionnaja rol' prava i gosudarstva: Obŝee učenie o prave* (*The Revolutionary Role of Law and State: the General Theory of Law* (1921) and Evgeny Pashukanis's *The General Theory of Law and Marxism* (1924) were created based on these viewpoints. Stučka defined the law as "a system (or order) of social relationships which corresponds to the interests of the dominant class and is safeguarded by the organized force of that class." Since the social relationship in the quote mainly referred to economic relations, the law was considered equivalent to the sum of the specific social and economic relations. In his view, property and legal relationships were merely another name for economic relationships (Kelsen, 2004, p. 10). Pashukanis considered legal relations as "social relations in a commodity-producing society". He believed that the main body of legal relations involved an owner handling commodities through acquisition and assignment, with the legal object serving as the commodity in question. A legal relationship thus involved legal obligations and rights; however, obligations were alternative manifestations of corresponding rights. Thus, legal relations were not only directly derived from the existing social relationships of production, but also formed the core of the legal structure. As such, it was considered that only legal relations permitted the law to achieve its true momentum; and without the existence of commodity economics, social relations, and legal relations, all legal norms became meaningless (Pashukanis, 2008, p. 40, 47, 50, 52). Therefore, it could be said that Soviet scholars at this stage subverted the common understanding of priorities between the two conditions of legal relations, namely, legal norms and social relations. In some instances, legal norms were considered to be an optional factor. Moreover, it was believed that social relations (economic relations), legal relations, and the law were the same to a certain extent.

The second stage began with the first All-Union Conference on the Science of Soviet Law and the State (Vsesojuznom soveŝanii po voprosam nauki gosudarstva i prava) in July 1938, whereby Soviet Prosecutor General Andrey Vyshinsky issued a long report entitled "The Fundamental Tasks of the Science of Soviet Socialist Law". In the report and a later work, *Sovetskoe gosudarstvo i pravo* (*Soviet State and Law*), Vyshinsky attacked the anti-normative theories proposed by scholars such as Pashukanis and Stučka. Vyshinsky believed that, although laws, legal relations, and production relations were closely related, they could not be equated. For Vyshinsky, Social relations had a basis in reality and had material roots, and were the fundamental nature of law, while law was the embodiment of social relations. However, neither social nor legal relations were law itself, as law was neither a system of social relations nor a form of production relations, but rather a rule of conduct or regulations approved by the state power and guaranteed and enforced by the state (Vyshinsky, 1955, p. 100). Nonetheless, as a flag bearer of Marxism, Vyshinsky also recognized that social relations were at the foundation of law (and legal relations) while refusing any relation that his viewpoints bore with normative theories (such as that of Kelsen) (Vyshinsky, pp. 508-511). In general, during this second

stage, law was redefined as consisting of "norms" (although it was regarded as a tool for the ruling class, the two concepts were not contradictory); thus, law was re-separated from social and legal relations. The legal theories of Vyshinsky remained at a dominant position in the history of Soviet law for nearly 20 years.

The most distinctive feature in the study of the general theory of law in the Soviet Union is the substitution the traditional analytical legal theory with social legal theory. This shift in the research perspective on the general theory of law also reflected the differences between Marxism and other theories. Marxism involved the approach of research from a sociological perspective, with a focus on the conditions for the emergence and effect of law, while other theories often adopted a normative viewpoint, whereby the structure of the normative system is analyzed (Kelsen, p. 238). These two types of approach constituted two major schools of the research of the general theory of law. In addition, due to Marxism, the Soviet theories of legal relations created a "strained relationship" between legal norms and social relations due to difficulties in determining which played the leading role in legal relations. This tension actually reflected the two characteristics of legal relations: legality and sociality. The methodological transformation in the study of the general theory of law and the inherent tension within the theory of legal relations also deeply influenced corresponding research in China, due to the heavy influence of the Soviet Union.

Full Adoption of the Research of General Theory of Law in the Soviet Union (1950s to early 1960s)

Following the founding of the People's Republic of China, the state created higher law education based on the Soviet model. Given that reconstruction of a nation required a new ideology that was compatible with the nature of the regime, the jurisprudence of China was immediately imprinted with political ideology, which manifested in all aspects of study, such as the disciplinary setting, educational goals, and research purposes. In short, jurisprudence served politics and was used as a tool to achieve political tasks (Wang & Gao, 2012, p. 19). Given that China and the Soviet Union shared a highly similar ideology, the general theory of law in the Soviet Union fit the needs of the state. The faculty of law, Renmin University of China, established in 1949, assumed the important task of training teachers and experts from legal departments of universities nationwide. The teaching and research office of the theories of the State and Legal Rights of the university became the center for disseminating the Soviet model for the general theory of the state and law (Liu, 2011, p. 111-112). Lectures, textbooks, and monographs from Soviet experts were translated, compiled, and rewritten into textbooks uniformly used by universities. Vyshinsky's *Voprosy teorii gosudarstva i prava* (*Issues of Theory of State and Law*) (1955) and M. P. Kareva et al. *Teorija gosudarstva i prava* (*The Theory of State and Law*) (1957) were the most renowned of the period. The *Textbook on Marxist–Leninist Theory of the State and Legal Rights* (1st Ed. in 1952, reprinted in 1954), edited by Institute of Law of the Soviet Academy of Sciences (*Institut Prava AN SSSR*) and N. G. Aleksandrov's *Zakonnost' i pravootnošenija v sovetskom obŝestve* (*Law and legal relations in the Soviet society*) (1958) were

also widely studied. *Politics and Law Translation Series*, a journal founded by the Chinese Political and Law Studies Association in 1956 became an important platform for publishing translations related to the Soviet model. In view of the historical background and environment at that time, although some domestic units also compiled lecture notes and readings on the general theory of the state and law, the style, structure, and basis of viewpoints were still derived from Soviet jurisprudence.① Moreover, legal relations theories were fully adopted from the third stage of legal relations development in the Soviet Union.

Throughout the mid-to-late 1950s, the theory of legal relations was focused on the research of the general theory of law in the Soviet Union and China. Compared to the previous stages, legal theories at this stage were developed surrounding the tone and framework defined by Vyshinsky (adapted accordingly) (Liu, p. 83, 89); however, new developments were observed. In February 1956, the Institute of Law of the Soviet Academy of Sciences organized a legal relations seminar, at which Kareva and S.F. Kechekjan presented their reports. These presentations defined the tone for the study of legal relations in the Soviet Union and China, thereafter. Strictly speaking, scholars had not yet reached a unified definition of legal relations; nevertheless, the existing definitions were not in contention with one another, but rather explained the concept from varied angles (subject, content, or a combination of the two). The most authoritative definition at the time was given by the *Юридический словарь*' (Law Dictionary). According to the dictionary, legal relations are but one form of social relations characterized by a relation in which the participants are bonded by the rights and duties specified under legal norms. Legal relations, in essence, were determined by the foundation of society and were ideological (Kudryavtsev, 1957, p. 116). The general theory of law in this period presented a more thorough understanding of the fundamental principles of Marxism, especially the effect and converse effect between the economic base and superstructure, as well as a more adept usage of Marxist methodology. As pointed out by the Honored Scientist of the RSFSR (Russian Soviet Federated Socialist Republic), A. A. Piontkovskiĭ, the unified scientific methodology of Soviet theory was the concept of materialist dialectics (Piontkovskiĭ, p. 40). Materialist dialectics included historical materialism and dialectical materialism, which manifested in both the characteristics and content of legal relations.

The scholars of this period achieved broad application of historical materialism. In terms of the relationships between legal relations and legal norms and social relations, scholars rejected the unrepresentative perspective adopted by the jurisprudence of continental European (which emphasized legal norms) and the previous two stages of the Soviet Union (which emphasized social relations), but rather regarded legal relations as the combined product of social relations and legal norms. Based on such an approach, they were able to define two attributes of legal relations. The first was sociality. The root of legal relations was social relations within the sphere of material life; hence, legal relations were restricted and determined by social relations in material life. Moreover, legal relations both emerged

① Such as *The Essential Issues of the Theory of State and Law* published by the Ministry of Justice of the People's Republic of China in March 1957 and Lectures on Theory of State and Legal Rights (I, II) compiled jointly by members of the teaching and research office of the theories of the State and Legal Rights, Law School, Renmin University of China, China Renmin University Press, 1957.

from and depended on economic relations (Keililova, 1957, p. 46). However, legal relations differed from social relations (with an economic base); social relations were regulated by legal relations, which were within the superstructure and should not be confused with economic relationships (Gromova, 1956, p. 91). The second attribute was legality. According to scholars at the time, legal relations were unique social relations formed based on legal norms. Legal norms were thus necessary conditions or prerequisites for legal relations, without which, they could not exist (Kareva et al., 1957, p. 438). Social relations were thus the foundation for legal relations and content; while legal relations were second in priority, serving as an insulator for social relations. Legal relations were considered the mediator of legal norms and social relations; specifically, the regulating function of legal norms and the converse effect of law on the economic base were achieved through specific legal relations.①

Soviet scholars also utilized the "material/consciousness" framework to position legal relations. It was believed that legal relations were relations of will. Legal relations were regulated by legal norms, which were the manifestation of the will of the ruling class; hence, legal relations inevitably reflected the will of the ruling class (Gromova, p. 90). However, scholars had inconsistent viewpoints in terms of whether legal relations were solely relations of the will of the social classes. Some scholars insisted that legal relations could also, however not always, reflect the individual will of the participants (Aleksandrov, pp. 208-209). While others were still of the divisive viewpoint that legal relations reflected predominantly individual will (Starikovich, 1957, p. 2). This was contrasted by those that advocated for a compromise, where although legal relations were not defined by a dependence on individual will, they reflected individual will in application (Romashkin, Strogovich & Tumanov, 1963, p. 464). Moreover, since all relations of will stemmed from ideology, legal relations began to be considered an extension in form of ideological (social) relations. This viewpoint stemmed from Lenin's dichotomy of "material" and "ideological" relations. According to Lenin, "Social relations are divided into material and ideological relations. The latter merely constitutes a superstructure on the former, which takes shape independent of the will and consciousness of man as (the result) the form of man's activity to maintain his existence" (Lenin, 1955, p. 131).

The application of dialectical materialism became intertwined in the contents of legal relations. However, the rate of progress of legal relations as a research field was limited when compared to the achievements of the previous periods. Scholars defined rights as state-protected prospects for the obligee to conduct certain behaviors (including the prospect of requiring others to perform certain behaviors), while duties were defined as the behavior conducted by the obligor required by legal norms (Kareva et al., pp. 452, 454). Contrary to rights in Western theories, where legal rights are seen as "pre-stated" ("innate") values, rights in the Soviet Union were bonded by state ("law"), which was a distinctive feature of Marxism. In terms of the relationship between rights and duties, the majority of scholars emphasized the mutual connection, interdependence, and mutual restraint between the

① See [USSR] S. F. Kechekjan, *Legal Norms and Jural relations*, [trans.] Jiaen Li, [eds.] teaching and research office of "Theory of State and Legal Rights," Renmin University of China, *Selected Translations of Theoretical Papers of the State and Law* (1st Edition), China Renmin University Press, 1956, p. 196.

rights and duties of the subjects in legal relations. Such viewpoints were specifically manifested as two principles. The first principle was that rights and duties corresponded; the rights of one subject always corresponded to the duties of the other. The second principle was the unity of rights and duties; a subject could not exercise his/her rights without bearing a duty; as such, upholding duties were seen as a prerequisite for exercising rights (Kareva et al., pp. 454-455).

Compared to legal relations, scholars had more conflicting viewpoints on topics where historical materialism and dialectical materialism could not be directly applied. One representative example was the object of legal relations, of which scholars were unable to reach a consistent understanding. Some believed that the object of legal relations referred to the object towards which the rights and duties of the subject were directed (Kareva et al., p. 449). Some scholars argued that the object of legal relations and that of rights and duties were different concepts, whereby the object of a legal relation is the affected social relation, while the objects of a right and duty are specific phenomena, things, and behaviors (Starikovich, p. 10). Other scholars argued that the object of all legal relations are human behaviors (Aleksandrov, 1958, pp. 98-99, 101). In addition, viewpoints differentiated among scholars in terms of the classification of legal relations' objects. Two methods were commonly accepted. The first was dichotomy, which divided the object of legal relations into things and actions (Gromova, p. 92), or things and the outcome of labor (intangible benefits) (Keililova, p. 48). The second was trichotomy, which divided the object of legal relations into things and material wealth, intangible wealth, and behaviors.

From the 1950s to the early 1960s, Chinese scholars fully adopted Soviet Union theories related to the study of the general theory of law. The fundamental principles of Marxism in this period were more maturely applied to the study of law, especially historical materialism and dialectics. For that reason, research on the general theory of law in China emerged with the following characteristics. Fields to which Marxism could be directly applied showed little disagreement between scholars. Even if disagreements existed, they were less likely to be opposing viewpoints. However, in fields where Marxist principles and theories lacked direct application (fields where more specific legal knowledge was required), conflicts between scholars erupted. Thus, a fundamental consensus was reached on the nature of legal relations, and the relationship between rights and duties, yet divergent opinions were held on the definition and classification of the objects of legal relations. As a consequence, studies where Marxist principles could not be applied usually lacked clear standards, boundaries, in-depth arguments and sufficient supporting evidence. This defect became the historical basis for the research of the general theory of law among the jurisprudence community and largely restricted research in the early stages of development.

Reflection and Breakthrough of the Research of the General Theory of Law (1950s to early 1960s)

Following the end of the Cultural Revolution, China restored legal education and research into jurisprudence began to recover. Prior to 1980, the jurisprudence textbooks of the political and law

colleges and law schools in comprehensive universities continued to refer to the textbooks of the Soviet Union, and the textbooks retained the name *(General) Theory of the State and Law*.[①] At that time, no distinctive differences existed between the studies of the theory of the state and jurisprudence. Jurisprudence, which did not have its own independent research area, essentially remained a part of political science (Xu, 2018, p. 46). However, from the 1980s, the jurisprudence community began to intentionally separate jurisprudence from political science and established jurisprudence as an independent discipline. The publication of works such as *References of Fundamental Theory of Law* (1980) edited by Yongfei Wang, *Fundamental Theory of Law* (trial edition of the textbook for Peking University) (edited by Shouyi Chen and Hongsheng Zhang, 1981), and *Fundamental Theory of Law* (trial edition of the jurisprudence textbook used by institutions of higher education) (1982) symbolized how "fundamental theory of law", as a discipline, gained recognition from within jurisprudence academia. At least, from the chapter title, "the state" no longer held a prominent position. In the late 1980s, what was most likely the final official textbook named *The General Theory of Law* was published. In addition to the sections that could be found in previous versions, such as "the nature of law" and "the history of law," the book also reorganized "the fundamental categories of law" (such as rights and duties, legal norms, legal systems, legal relations, legal responsibilities, legal awareness), and included topics such as "legal operations and processes" and "the relationship between law and other social phenomena." The book was thus seen as a prototype for the later jurisprudence textbook system. In addition, there were still several Soviet and Russian works being translated into Chinese during this period; however, the majority of the textbooks were named "The General Theory of Law" and the works had much less influence compared to the translated works in the previous stages of development.[②]

Nevertheless, changes in the names of the books did not indicate complete separation from past viewpoints. In fact, the overall framework of the general theory of law in China during this stage maintained its Soviet style, and could only be considered "an improved version" of the theory of the state and law in content, while political ideology remained an important part of theory. However, informal textbooks and academic works showed that Chinese scholars were more active in exploring the subject from new angles. The research topics greatly expanded; studies on legal relations began to cover content such as the competence of the subjects, classification, and the systematization of legal relations. More importantly, in addition to adhering to Marxist theories and methodology, scholars began to consciously reflect on the theories proposed by Soviet scholars and sought breakthroughs.

First, scholars attempted to deepen or revise existing research. Although the definition and characteristics of legal relations generally remained unchanged, scholars conducted in-depth reflections

① Such as *Thematic Topics and Bibliographies of Theory of State and Law* (1978) compiled by the Institute of Law, Chinese Academy of Social Sciences and *Theory of State and Law* (1979), a textbook written and edited jointly by the teaching and research office of "State and Law," Law School, Renmin University of China.

② See [USSR] L.S. Jawitsch, *General Theory of Law*, [trans.] Jingwen Zhu, Liaoning People's Publishing House Co., Ltd., 1986; [Russian] [ed.] V. Lazarev, *General Theory of State and Law*, [trans.] Zhe Wang, et al., Law Press China, 1999. Even though the book edited by Lazarev still put "law" and "state" together in the title, it proposed independence of law from the state, and law was prioritized in the text.

on the implications of the characteristics. In terms of the social nature of legal relations, it was recognized that social relations had dominant significance for legal relations. However, legal relations and the relations regulated by legal norms were divergent social phenomena; legal relations were the means of legal action while relations regulated by legal norms were the target of regulation (Alekseyev, 1988, p. 463). Regulation by legal norms did not necessarily transform social relations into legal relations, and legal relations were not a substitute for social relations (Zhang, 1985, pp. 54-55). Legal relations were then considered the unification of social content and legal forms (Zhang, p. 211). In addition, although scholars all agreed on the legal nature of legal relations, some scholars believed that "legitimacy" was a more appropriate description, as the parties of a legal relation must comply with the law (or be sanctioned by law); as such, legal relations manifested as legal social relations (Shu, p. 517).

Chinese scholars continued the debate started among Soviet scholars of whether legal relations reflected only the will of the state or the individual will of the participants; however, no unified viewpoint emerged. Compared to the Soviet theories, Chinese scholars differentiated in detail the will of the ruling class, the expression of will of the participants when a specific legal relationship was formed, and the expression of will of the participants when exercising rights and duties. A distinctive highlight of the period was between "will" and "relations of will." It was believed that, although the formation of legal relations might have required the involvement of the will of the participants, it did not necessarily indicate that legal relations were relations of will. Since all relations formed in a society involved the will of the people, legal relations were not distinctive in this regard (Li, 1989). This realization led to a debate among Chinese scholars: Do legal relations extend from an economic base or the superstructure? In addition to the conventional viewpoint that legal relations are ideological and therefore a part of the superstructure, a more representative claim was that legal relations were a combination of ideological and material relations (or the unity of will and social content) (Shao & Song, 1988, p. 19). In some instances, the dichotomy between the economic base and superstructure was breached to propose that legal relations not only included ideological and material relations, but also included relations of productivity (Zhang, 1988, p. 8).

In an attempt to surpass and innovate theories of the Soviet Union, legal relations were regarded as a "dynamic process". As such, legal regulation was partitioned into three stages. The first was the creation of law, where social relations were stipulated from a legal perspective and abstract behavioral patterns (rights and duties) were determined. The second stage was the implementation of stage law, where abstract behavioral patterns were embodied as specific rights and duties between subjects as legal facts emerged, forming a legal relation. The third stage was the execution of law, where subjects of legal relations exercised their rights and duties to meet the expectations of legal norms. Legal relations was thus considered the result of the implementation of law. Such an interpretation reformed Soviet scholars' static interpretation of the relationship between legal norms and legal relations.

With regards to the content of legal relations, the debate was divided between "right-centricity" and "duty-centricity", leading to a profound influence on the Chinese legal community in the late 1980s. The symbolic event of the debate was the "National Seminar on Fundamental Categories of

Law" hosted by Jilin University in 1988. The seminar proposed a reconstruction of the legal theory system with legal rights and duties as fundamental categories, and transformed the view of rights as essential to the reconstruction of the legal system, which contributed to the birth of the "right-centricity" school.[①] However, many opposed such an approach (Zhang, 1990), while others attempted a more moderate tactic (by claiming that rights and duties were equally important) (Feng, 1990; Guo, 1991). The dominant position of the "right-centricity" theory in the debates stimulated research on "rights" thereafter. These changes suggested that, beginning with fundamentals of rights and duties, Chinese academia had begun to abolish the traditional research paradigm of the general theory of law.

In relation to such breakthroughs, the greatest innovation at this stage was exploration of the object of legal relations. In addition to the question of whether the object of legal relations is the object of legal rights, a crucial debate topic of Soviet academia, scholars also raised two new questions. The first was whether the object of legal relations was actually an element of legal relations. It was generally considered that the object, subject, and content of legal relations are all elements of legal relations. However, the belief that the object was not an element of legal relations gradually emerged. Specifically, since the object was a function of rights and duties, it need not be conceptualized as a legal relations construct (Zou, 1992, p. 42). The second question was whether the object of legal relations was actually the same as the subject matter (target). For the most part, the two concepts were not differentiated; however, the question presented the idea that the object of legal relations was a (legal) behavior in all instances, while the subject matter (target) was the specific object to which the behavior was oriented (Xue, 1995, pp. 21-22).

Studies on the taxonomy of objects in legal relations achieved significant progress during this period; scholars expanded on the classification of objects far beyond that of the Soviet theories and proposed a four-class theory, namely, the "thing", "person", "products of spiritual activity", and "results of conduct".[②] In addition, a new understanding and interpretation of each classification was proposed, with the exception of "things", which remained as is. The term "products of spiritual activity" were derived from the term "intangible wealth" or "intangible property" in the concepts of jurisprudence of the Soviet Union, where wealth and property represented interest. However, strictly speaking, the legal good (*Rechtsgut*) recognized and protected by law was not an object in itself; it was the externalization of *Rechtsgut* that was the object (Shu, p. 541). For that reason, it was proposed that the expression "intellectual products" was more scientific, which was further suggested as consisting of intellectual and moral products (Zhang, 1991, p. 72). The term "results of conduct" was a revision of the term "behavior" proposed by Soviet jurisprudence. Although some scholars insisted that legal behaviors were an object of legal relations, a growing school of thought argued that behaviors were the "social content" of legal relations (Zhu & Han, 1994, p. 35) (while rights and duties were the legal forms of such content). The object of rights (legal relations) was thus the result of the completion of the

① One representative work was that of Wenxian Zhang, Analysis of the Semantics and Definitions of Right-Centricity, China Legal Science, 1990 (4), p. 33.
② Of course, the premise here is not to distinguish between the object and subject (target) of jural relations.

obligor's conduct that satisfied the requirements of the obligee (results of conduct). Moreover, results of conduct could be separated into tangible and intangible results (Shu, p. 544). Compared to the remaining three categories of legal objects, "personal rights" was a concept completely conceived by Chinese scholars. Although in the mid-1980s, some official textbooks claimed that "personal rights" could not be an object of legal relations under any circumstances in socialist laws due to the confusion between "person" (as the subject of the legal relations) and "personal rights" (as the object of legal relations); however, it was increasingly supported that "personal rights" could be an object in certain situations (Zhang, 1986, pp. 92-93).①

The final pivotal development was the application of the corresponding theories in fields other than civil law. Given that the general theory of law was defined as "general," it should be positioned above and applicable to all other branches of law; however, modern jurisprudence developed based on the fundamental legal concepts of civil law. As a result, the "generality" of a general theory influenced by civil law became questionable. Further examination was required to determine whether the general theory could shed the presupposition of civil law and exert persuasive and explanatory power in all branches of jurisprudence. Although Starikovich pointed out as early as the 1950s that few academic works on criminal, trial, and administrative law included issues related to legal relations (Starikovich, p. 12), his fellow scholars showed little intention to fill this research gap. Thus, in apparent response to Starikovich's criticism, some 30 years later, Chinese scholars began the task of expanding coverage of legal relations from civil to other areas of law. The most representative endeavor was the application of legal relations to the study of criminal law; resulting in theories of criminal legal relations (Shu, 1985; Liu, 1993). However, such efforts were not recognized by all scholars. Furthermore, it was questioned whether rights and duties constituted the content of all legal relations (Zhang, 2000, pp. 8-10).

To summarize this section, from the early 1980s to the mid-1990s, research on the general theory of law in China penetrated the ice of the Soviet predecessors. Chinese scholars demonstrated the will to shed the influence of Soviet tradition and politics and construct a more scientific and independent legal discipline. The academic community initiated active discussions and debates and proposed a variety of new ideas and viewpoints. Although still influenced by Soviet jurisprudence, Chinese scholars attempted in-depth exploration and revision of the Soviet theories while adhering to the fundamentals of Marxism. New topics and concepts were proposed, and gaps in research were filled. In addition, the application of the general theory of law was expanded beyond civil law to determine the extent of "generality" of the theory. However, due to the lack of fundamental academic consensus and methodological consciousness, there was still a lack of professionalism when conducting meticulous and judicious analyses. For that reason, the study of the general theory of law required moving beyond the initial stage of "spontaneous creation" to a stage of "conscious innovation" through the application of external knowledge resources and professional methodological instruments.

① See Guangbo Zhang, Legal Theories, Jilin University Press, 1986, p. 92-93. Nevertheless, many scholars failed to distinguish between "personal rights" and "personality" by using them interchangeably or regarded both as objects of jural relations. However, "personality" was an innate element of the person as the subject of jural relations; therefore, it could not become the object of jural relations.

An Open and Innovative Approach to Research on the General Theory of Law (late 1990s to the present)

From the late 1990s, the development of jurisprudence in China entered a "fast track," where historic breakthroughs were achieved as jurisprudence obtained a legitimate position as an independent discipline in the fields of legal science, philosophy, and social science. "Jurisprudence" replaced "fundamental theory of law" and became the official name of the discipline. Although the textbooks named "Jurisprudence," edited by each politics and law college, had their own characteristics, the contents showed a similar trend: an increasing number of topics were included, such as the origin and development of law, the value of law, legal operations, law and society, and the rule of law (including the rule of law in China).① Such themes extended far beyond the coverage of the conventional "general theory of law." Some textbooks also incorporated the debates of legal concepts (Shu, 2012, pp. 25-28), or were edited completely based on the framework of the philosophy of law (Xu, 2009). Moreover, the individual research of jurists increasingly diversified, as the conventions of jurisprudence study were put aside and specific knowledge was sought in accordance with their own interests, which included pedigrees of knowledge and theories extending from authors (such as Hans Kelsen, Gustav Radbruch, Jürgen Habermas, Richard Posner, Herbert Hart, Ronald Dworkin, Joseph Raz, Niklas Luhmann, and Robert Alexy), schools of thought (such as natural law and legal positivism), ideological trends (such as law and literature, feminist jurisprudence, critical jurisprudence, Marxist jurisprudence), and academic themes (such as legal system modernization and legal transplantation) (Shu, 2019, p. 15). As a result, disputes arose over various subjects (such as the most appropriate pathway for legal system modernization), schools of thought (such as social science of law and *Rechtsdogmatik* [legal dogmatics]), and methodologies (such as normative approaches or the Big Society approach). In this period of revitalization, the study of philosophy of law regained an important position in jurisprudence, while various interdisciplinary studies (such as sociology of law, legal anthropology, law and economics, and law and cognitive science) began to emerge and flourish.

These changes were associated with the political and social environment of the period. Important theoretical questions were put forward during legal practice, and jurists began actively promoting legal reforms and the rule of law in China, while utilizing a variety of theoretical resources, approaches, and methods. Distinctively, issues related to the rule of law (the system of the rule of law and the rule of law in China) were prioritized in the jurisprudence community. The fundamental strategies for governing the state emerged based on the political concepts of "ensuring law-based governance, building a country of socialist rule of law," and"ensuring every dimension of governance is law-based," "advancing the modernization of China's system and capacity for governance." Correspondingly, the branches of disciplines related to such concepts, such as philosophy of law and sociology of law, rose in popularity among academia. Such a shift in research did not directly signify

① Representative textbooks include Wenxian Zhang, *Jurisprudence* (5th Ed.), Higher Education Press, Peking University Press, 2018.

that the study of the general theory of law was completely replaced by other research, but rather indicated that the study of the general theory of law during this stage deepened to become more diverse and intellectual. Moreover, the traditional fundamental legal concepts required modernization to be more in line with the times. Although a decline was observed in the number of academic achievements during this stage, and scholars tended to focus on specific aspects of fundamental legal concepts (for example, the discussions on legal relations focused on the contents such as legal rights) rather than the systematic study of some or all of the concepts, important innovations were achieved while Chinese scholars continued the research pathways of the previous stage. Discussions mainly concentrated on two aspects: constructing the elements of legal relations and deepening the understanding of the objects of legal relations. More important changes were reflected in two aspects.

The first change was the active incorporation of theoretical achievements from foreign theories of law into Chinese discussions while seeking novel approaches. Research on the general theory of law began integrating theories other than Marxism; a large number of works from Continental Europe (mainly Germany), the UK and the US were translated into Chinese, which greatly enriched reference resources.① The new generation of jurist scholars began consciously constructing unique theories based on foreign jurisprudence, while integrating discussions from the international arena. Contrary to previous stages of development, additional attention was cast on the history of a given theory, as well as the inheritance and development of academic traditions. Novel findings were thus consciously sought, and arguments emerged with solid academic foundations.

Due to the efforts of scholars in civil law, Savigny's theory was translated and published in Chinese, and his theory of nature and classification of legal relations spread widely (Savigny, 2004, pp. 1-12; Savigny, 2010, pp. 257-332). Comprehensive reviews of Savigny's theory of legal relations were conducted, which included the background of the theory, the relationships between legal relations, life relations; the legal systems and nature, elements, and characteristics of legal relations; and the connection between legal relations and private law (Zhu, 2010).

In addition, significant effort was invested in the study of the content of legal relations, mainly, legal rights. In Chinese academia, "rights" and "duties" were consistently recognized as fundamentals aspects (or even the most fundamental aspect) of jurisprudence. Jurisprudence was considered to be "the study of rights and duties" (especially "the study of rights"), while legal relations were considered to be "the relationship between rights and duties of the subjects". In particular, influenced by the once dominant "right-centricity" theory, legal rights became the focus of discussion and research. In addition to the study from the perspective of the philosophy of law (which focused on the dispute between "the theory of interest" and "the theory of will"), research on the general theory of law was concentrated on the classification of legal rights and the relationship between rights and duties. The advancements achieved corresponded with the introduction of the work of American analytical jurist,

① After the 1990s, Japan also had a great influence on the jurisprudence community in China. Nevertheless, this influence mainly focused on legal sociology and legal interpretation theories, rather than the general theory of law; hence, it is not included in this study.

Wesley Newcomb Hohfeld. Achievements were also made by Chinese scholars in the study of rights prior to (in addition to) the introduction of Hohfeld's theory. For example, Soviet theories lacked a clear partition between "rights" and "power/authority", which were addressed in the early 1980s by the work of Zongling Shen (Chen & Zhang, 1981, pp. 354-355). Zhiwei Tong further suggested that legal relations manifested three groups of relations: "rights-power," "rights-rights," and "power-power" (Tong, 1999, pp. 28-30). Guoying Shu was the first domestic scholar that further divided rights into rights of freedom, claim rights, and appeal rights (Shu, 1995, pp. 4-6). These viewpoints were similar to those of Hohfeld to a certain extent; however, the framework proposed by Hohfeld was more comprehensive and systematic regarding the four opposite and correlative jural relations, where a detailed analysis of each was performed (Hohfeld, p. 26 ff.). Zongling Shen brought significance to Hohfield's work in China when he compared Hohfield's model with corresponding concepts in existing branches of law and regulations (Shen, 1990). Based on this analysis, Shen noticed a fundamental difference between Chinese and Western theories, where Chinese theories considered rights to have a private nature, while power was considered public. This implied that conceptual differences existed between the concepts of the "rights" and "power" of the subject, *Rechtsgut*, and the relationship between duty and the coercive force of the state. However, such conceptual differences did not exist in the Western context (Shen, 1998, p. 8).

The previous generation of scholars built their theories on the opposing relationship between "public power" and "private rights," while studies of the new generation were more in line with Hohfeld's original claim, which considered "power" as a sub-category of "rights" in a broad sense; hence, "power" exists in both a private and public legal context. However, it was the civil law scholars, rather than jurisprudence academia, that initially interpreted legal relations using Hohfeld's original theory. Generally, either Hohfeld's four classifications of rights (claim, privilege, power, and immunity) were compared to conventional taxonomy in German civil law theory (*Anspruch* [right to claim], *Herrschaftsrecht* [right of dominion], *Gestaltungsrecht* [right to influence a legal relationship by unilateral declaration/right of formation], and *Gegenanspruch* [counterclaim]) (Wang, 1998, pp. 591-593), or his theory was used to construct models based on specific elements of legal relations (Ran, 1999). Compared to specific branches of law, scholars of jurisprudence extensively explored the depth of meaning of Hohfeld's model. In addition to mere breakdown, modification to Hohfeld's theory (such as the modification of the eight fundamental concepts and their relationships) were suggested (Liu, 2018, p. 119 ff.). Interestingly, in this instance, "applied" research preceded "prototypical" research, reflecting a fundamental pattern of research in the general theory of law in contemporary China, whereby dissatisfaction with existing theories and growing demand for new theoretical resources originated from a specific branch of law, stimulating jurisprudence scholars to conduct corresponding in-depth studies.

The second significant shift in thought was the application of conceptual and logical analyses in studies. In addition to substantive viewpoints, methods used in early theories (analytical legal theory) were introduced from other countries, specifically conceptual and logical analyses. The revival of conceptual and logic analyses was mainly due to the translation, propagation, and demonstration

of works from Britain and American analytical jurisprudence. In addition, the rise of analytical philosophy and logic in philosophy in academia during this stage, and their influence on legal scholars, stimulated the incorporation of conceptual and logical analyses in the research of the general theory of law. The majority of studies covering Hohfeld's model adopted conceptual analysis methods. In addition, conceptual analysis was used to challenge the relevance (or unity) of rights and duties (Chen, 2014). Logical analysis was also incorporated into the research of legal rights, to logically analyze the structure and taxonomy of legal rights (Lei, 2014) and to introduce deontic logic to conduct systematic analysis of the eight fundamental concepts and their complex structures of interrelations (Xiong, 2019). Different from the conventional studies that employed materialistic dialectics or values from philosophy of law, new approaches were explored to expand investigations of legal relations.

From the late 1990s to the present, research on the general theory of law in China has experienced stable development. Although the proportion of relevant research, compared to the total number of jurisprudence studies, has decreased noticeably, the quality of the research has significantly improved. Specifically, scholars have expanded academic horizons, introduced and incorporated mature theories from foreign academic circles, and modified concepts to match the Chinese context. In addition, research has shifted from simple analyses and specific application of theory to theoretical progress and independent innovation. More importantly, the predicament of research dominated by the social legal theory was overcome by applying conceptual and logical analyses, and the development of the general theory of law faced new opportunities and challenges.

The Patterns and Characteristics of Research on the General Theory of Law in China

The formation of an independent taxonomy symbolizes the maturity of a discipline (Huang, 2019, p. 10). Over the past 70 years, despite uneven pathways during development of the general theory of law, a characteristic system of legal concepts and taxonomy was constructed. The development patterns and characteristics over the past 70 years can be summarized as follows.

The development of the general theory of law in China has been closely associated to the historical process of the practice of the rule of law and the legal progress. Over the past 70 years, jurisprudence has undergone three revolutionary stages of exploration and achieved three historical developments (Zhang, 2019, pp. 23-28). After the founding of the People's Republic of China, when a socialist legal system was established and a new system for socialist jurisprudence was explored, research into the general theory of law was based on the general theory of a Marxist state and law. Academia inherited the perspectives of Marxist positions, viewpoints, and methods to study fundamental legal concepts. However, restricted by historical conditions, the studies were heavily influenced by the Soviet Union. Vyshinsky's "class struggle" paradigm had a dominant position in corresponding research, and there were misunderstandings and misinterpretations of Marxist legal theory. Due to weak theoretical foundations and a lack of knowledge and skills within the legal system, Chinese academia was unable to establish a theoretical system that was

original and fortified. For that reason, following the Sino-Soviet split in the late 1950s and the worsening of the political environment in the 1960s, research into the general theory of law come to a standstill. The second stage emerged following the Third Plenary Session of the 11th CPC Central Committee in 1978. The socialist legal system and the fundamental strategy of law as a method of governance was restored, improved, and optimized and a socialist law with Chinese characteristics was sought. Following the Cultural Revolution, an ideological revolution to "set things right and debunk the falsehoods" was initiated, Chinese jurists began to make notable achievements and impacts on the establishment of a more comprehensive jurisprudence system. Particularly, revolutionary progress was achieved in the research on the general theory of law, allowing the discipline to modernize and new topics to be explored with broader academic horizons and deeper foundations. However, certain problems remained. As was previously discussed, the preceding focus on the classic works of Marx and Lenin led to the rejection of other theories, which narrowed jurists' perspectives. An opposing trend materialized after the 1990s, when scholars (especially the new generation of jurists) concentrated excessively on the general jurisprudence of Western countries, casting insufficient focus on the inheritance and development of Marxist conventions. Marxism is an open theoretical system that continues to progress with modern developments, practice, and science. The Marxist approach to law and its sinicization can only operate as a gradual process of rationally incorporating core elements from other academic traditions based on the practice of law in China and modern prerequisites to ensure a scientific and optimized basis. The third stage began following the The 18th National Congress of the Communist Party of China, which promoted the comprehensive use of law to govern the country, building a socialist nation ruled by law, and exploring the construction of a legal system with Chinese characteristics. The Fourth Plenary Session of the 18th Central Committee of the Communist Party of China made "ensuring every dimension of governance is law-based" as its core theme, a first in the history of the ruling party. The session proposed a systematic and comprehensive top-level design of the construction of the rule of law characteristic of Chinese socialism. Correspondingly, the need to accelerate the construction of a legal system with Chinese characteristics (incorporating disciplinary, academic, and discourse systems) to meet the requirements of law-based governance became increasingly eminent. Methods to use the new ideas, thoughts, and strategies for governing the country by law promoted the historical innovation of the sinicization and modernization of the general theory of Marxist law.

Research into the general theory of law in China was greatly influenced by the model of "theories of the Soviet Union + prototype of civil law".[①] The Soviet theories, especially those of Vyshinsky, had long dominated Chinese jurisprudence. Although, from the 1990s, Chinese academia began to increasingly focus on the research results and theoretical views of other countries and other academic traditions, the mainstream paradigm was still heavily influenced by Soviet theories (which were reflected in the official state-compiled textbooks). Such influences were not only manifested in the specific views of legal relations theory (such as the characteristics of legal relations, the definition

① Professor Guoying Shu pointed out more than 20 years ago that, on the whole, the theory of jural relations in our country (China) in the new era still followed the pattern of "theories of the former Soviet Union + traditional theory of civil jural relations" that prevailed in the 1950s.

of the relationships between social relations and legal norms, and the emphasis on the will of the state), but also in the research frameworks of legal relations' studies (such as the key elements of legal relations). The power of political and legal traditions and ideologies was influential, and the progression and development of the research paradigm of the general theory of law was not achieved overnight. Jurists were faced with the challenge of overcoming rigid dogma and pure ideology while reasonably adhering to the core concepts of Soviet theories, and shifting research toward the general theory of true "law" (rather than the superficial partition of "law" and "state"), restoring the position of the general theory of law as the general theory of the narrow legal science (*Rechtsdogmatik*), and constructing a more fundamental scientific and academic system.

The general theory of law originated from civil law. Civil law was seen in history as the "mother of all laws" and was the first branch of law to mature and provide theoretical sources for fundamental legal concepts such as legal relations. This was true in Germany, as well as the Soviet Union and China, which inherited the Soviet theories. However, the origins restricted scholars' "theoretical imagination" to the characteristics of civil law, which resulted in the conscious or unconscious use of civil law as a presupposition when constructing a general theory of legal relations. As a result, the "general theory of law" became untrue to its nature. Although, compared with the 1950s, since the 1980s, Chinese scholars have been able to better illustrate some of the theoretical issues of legal relations with examples of practice in China, and the theories of legal relations have been applied to other branches of law, the theory of legal relations has remained narrow in its vision and unsophisticated in its methodology. The conventional theory of legal relations "can only partially explain the civil legal relations, rather than fully explain the criminal legal relations, administrative legal relations, and constitutional legal relations. Therefore, the existing jurisprudence theories on legal relations in China tend to have insufficient persuasive and explanatory power in jurisprudence and legal practice" (Liu, 2008, p. 44). For example, legal relations in criminal law cannot be simplified into a binary framework of "rights (rights to claim) and duties," and the legal objects in criminal law cannot be found among the classifications of "things," "personal rights," "products of spiritual activity," and "results of conduct." For that reason, some branches of law have excluded legal relations from their textbooks, which contradicts "legal relations" as the "logical middle term" of jurisprudence. Gradually reducing the bias of civil law and developing a more general theory that extends to all branches of law will be an important criterion for assessing the professional competence of future Chinese jurists.

Finally, with respect to research methodology, a variety of methods are being incorporated, as opposed to the use of single-methodology studies in the general theory of law. For Chinese jurisprudence, the Marxist methodology is a fundamental scientific method that has been tested over time and practice and should be skillfully and carefully applied to the study of fundamental legal concepts rather than abandoned. As claimed by scholars D. A. Kerimov and B. V. Sheindlin, from the Soviet Union, the study of the general theory of law relies on a unified Marxist methodology and historical materialism. From the perspective of historical materialism and political economics, it is a specialized science; it is also a comprehensive science for various branches of legal science (legal dogmatics). However, when studying

specific concepts of fundamental law (such as the taxonomy of legal relations' objects, classification and structures of rights and duties, and legal facts), a combination of other methods, especially analytical methods (conceptual and logical analyses), is necessary, due to Marxist methodology being a social theory. Although this has advantages in grasping the nature and development pattern of phenomena through qualitative analysis, it lacks more refined quantitative research on the structure and elements of law from a professional legal perspective, as required by the research on the general theory of law. If research into historical materialism and dialectical materialism are the fundamental "*dao* (path)" of law and legal practice, then analytical methods are the "*qi* (instrument)" of theoretical inquiry that facilitates the demonstration of the inherent complexity of law and jurisprudence. Only by emphasizing both the "path" and the "instrument" can the fundamentals of the discipline be mastered with professionalism, while shedding immaturity in perspectives. A promising trend has recently revealed that analytical methods have gained increasing attention among the new generation of jurists and the combined use of methods has emerged in academic works; however, such applications have not yet entered the mainstream. It has been pointed out that, "among all changes, the change in methodology is the greatest progress" (Heck, 1993, p. 32); as such, compared to substantive claims, the "awakening" and modernization of methodology has even greater significance for the future of research on a general theory of law.

Conclusion

The rise of research into the general theory of law (general jurisprudence) in the mid to late 19th century and its subsequent spread across Europe and America (including the Soviet Union) was an inevitable manifestation of its precedent. The emergence of research represented that, with the increasing use of scientific methodologies, jurisprudence had gradually shifted away from the conventions of metaphysical philosophy and moved closer to application-oriented legal dogmatics, ensuring a specialized and scientific approach. Contradictorily, the development of Chinese jurisprudence over the last 70 years has shown an opposing trend. The starting point of Chinese jurisprudence research was not the philosophy of law, but rather research into the general theory of law under the heavy influence of the Soviet Union, which dominated and exhausted the ingenuity of Chinese jurisprudence researchers. Although the philosophy of law (including the interdisciplinary study of law and other disciplines) did not become mainstream in legal studies in China until only 20 years ago, it quickly dominated academia, leading to a decline in research on the general theory of law. As a result, efforts to explore fundamental legal concepts remain insufficient. The "ontology of law" and "fundamental concepts of law (legal science)" remain the only visible signs of general jurisprudence in textbooks. Such a dichotomous theoretical attitude devalues the historical conventions so carefully developed and ignores the requirements of the current era. The socialist rule of law with Chinese characteristics in the new era of China requires the support of jurisprudence in the theoretical system, discourse system, and conceptual system more than any other time in the past. To this end, it is essential to promote research into the general theory of law, providing new

connotations in the current era, and implementing a systematic re-structuring of the discipline.[①] The general theory of law is far from an "historical relic". On the contrary, while not hindering research into the philosophy of law and other legal research methods, jurisprudence scholars must meet the needs of the times in the development of legal disciplines while introducing foreign studies and adhering to Marxist theory to construct a consistent and original fundamental legal system.

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① Professor Wenxian Zhang recently put forward the "theory of law" as a central theme of jurisprudence in his programmatic thesis, calling for a transformation from a rule-of-law focused China to a theory-of-law focused China (See Zhang, W. (2017). Theory of Law: The Central Theme of Jurisprudence and Common Concern of Law Science, *Tsinghua University Law Journal*, 4, pp. 32-40, which can be regarded as a precursor to the systematic restructuring.

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