



# CHEN GUANGZHONG: SELECTED WORKS ON LAW

Foreign Language Volume

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## About the Author

A native of Yongjia in east China's Zhejiang Province, and born in 1930, Chen Guangzhong graduated from the Faculty of Law of Peking University in 1952. Beginning in 1984, Chen Guangzhong was elected president of the Procedural Law Research Council of China Law Society consecutively four times. In 1986, he became China's first academic advisor to doctoral students of procedural law. In 1993, Chen Guangzhong was appointed president of China University of Political Science and Law. He is now a life-tenure professor with China University of Political Science and Law.

Professor Chen Guangzhong, as a founder of the science of procedural law in new China, has made outstanding contributions to the development of the science of procedural law, particularly the science of criminal procedure law, in China. He emphasizes that in modern countries with the rule of law, procedural law is of its own important and independent value. He proposes that the purpose of criminal proceedings to protect human rights not be neglected. He emphasizes that the principle of separation between prosecution and trial, the principle of equal antagonism between the prosecuting party and the defending party, and the principle of impartial judgment by the trying party should be implemented in the structure of criminal proceedings. He emphasizes that judicial independence is the most important systemic guarantee for realizing judicial impartiality. He strongly advocates the strengthening of legal protection of rights of criminal suspects and defendants. He emphasizes that the doctrine of presumption of innocence should be



clearly recognized. And, he also strongly advocates the extension of rights of victims of crimes while strengthening legal protection of the defendant, etc.

In October 1993, Professor Chen Guangzhong, authorized by the Legislative Affairs Commission of the Standing Committee of the National People's Congress, presided over the work of research for revision of the Criminal Procedure Law, working out a set of Suggestions for the Revision of the Criminal Procedure Law of the People's Republic of China. Sixty-five percent of the terms in this set of suggestions were absorbed by the new Criminal Procedure Law revised in 1996. As a result, Chen Guangzhong earned the reputation as "the father of China's new Criminal Procedure Law". In October 2003, Professor Chen Guangzhong presided over the start of a research topic for a new revision of the Criminal Procedure Law, publishing the Expert Draft for Re-amendment to the Criminal Procedure Law of the People's Republic of China and Its Annotations, which aroused extensive concerns.

(This introduction is quoted from the article 60 Leading Figures of Law in China over Past 60 Years, which was originally published in a Chinese-English Bilingual Bimonthly China Law, Issue 6, 2009. This magazine is designated by the Ministry of Justice of PRC as the only free subscription to the departments of justice of all countries, international organizations and foreign diplomatic missions in China.)

## Preface

“Science is rooted in conversations.” Heisenberg, a famous German physicist, once demonstrated. I have the exact same feeling. International academic exchange is a significant part of my teaching and research career. Over the years, I visited a number of countries, such as the United States, Canada, Britain, France, Germany, Portugal, Japan, etc., made the acquaintance of many foreign experts and scholars, and struck up deep friendships with them. I undertook and presided over the research work on the part of international cooperative programs sponsored by the Ford Foundation (US), the International Center for Criminal Law Reform and Criminal Justice Policy (Canada), the European Commission as well as the International Bridges to Justice. The above-mentioned programs were supported by the foreign experts and scholars, and obtained satisfactory and fruitful research results.

For the convenience of the foreign friends to know my main academic thoughts so as to enhance the academic exchange, I specially compile this foreign language volume as a component of my *Selected Works on Law*. This volume has collected the English versions of *Criminal Evidence Law of the People's Republic of China (Expert Draft)* and *Expert Draft for Re-amendment to the Criminal Procedure Law of the People's Republic of China*, both of which were the results of the programs presided over by me and participated in by experts and scholars, as well as my papers translated into foreign languages, among which some were papers published abroad, some were speeches delivered abroad, and the others were bilingual papers published in China. The languages used in these



papers include English, Portuguese, French and Japanese, which are all retained in this volume.

On the occasion of publishing my *Selected Works on Law*, I hereby express my sincere gratitude to the foreign friends for their warm support and help.

Chen Guangzhong  
Life-Tenure Professor of Law  
China University of Political Science and Law

December, 2009



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## **Part I**



# **A Recent Study on Judicial System in China**





## Abstract of Research on the Fundamental Theoretical Issues of Judicial System in China \*

This book is divided into two parts and is composed of fourteen chapters.

**Chapter 1** interprets a series of basic concepts and ideas from a “Chinese” perspective, such as the attributes and characteristics of justice, the judicial authorities, the judicial system etc. It deems that “justice” is an activity where the state exercises its judicial authorities, and that, a broader definition of “justice” as equivalent to “litigation” would be more appropriate for the reality of China. The major characteristics of justice are summarized into the following five aspects: trial proceedings as its core, fairness and justice as its soul, strict legal procedure as its presentation, judgment character as its essential, and authoritativeness as its marked indication. So far there has been no unified definition of judicial authority across the world. In terms of Constitutional Law, political system and realistic position and functions of courts and procuratorates in China, the judicial authorities in China should encompass the courts and the procuratorates. The public security agencies are part of the administrative branch, but the investigative power they exercise is a power of criminal justice. The judicial system in China refers to the system of the organization of judicial authorities and the system of proceedings institution

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\* This is the abstract of the book *Research on the Fundamental Theoretical Issues of Judicial System in China* (to be published in 2010), the result of a significant national project of philosophy and social science research sponsored and supported by the Ministry of Education of P. R. C. This project is presided over by Prof. Chen Guangzhong, and the above-mentioned book was completed with his guidance and its contents epitomized his academic viewpoints as well as judicial reform suggestions. Therefore, we hereby collect this Abstract and place it before the other papers in this volume.



or participation by judicial authorities and other relevant organs and organizations according to law, which mainly include the trial system, the procuratorial system, the investigative system and the lawyer system. With regard to the functions of justice, this chapter explores the nature of these functions, and comes to the conclusion that the task of justice in China is to settle social disputes, to implement the laws in an accurate manner, and therefore to achieve the goals of guaranteeing the democracy and the rule of law, accomplishing fairness and justice and promoting peace and harmony.

**Chapter 2** focuses on the relationship between the political system and the judicial system. The political system is composed of the state system and the political regime. The judicial system is a significant component of the political system and possesses the function of guaranteeing the normal operation of the political system. The political system of *trias politica* in western countries determines their special judicial principles and the interrelationship between judicial authorities and other authorities. Despite the fact that China has incorporated part of judicial system under the political system of *trias politica* in western countries into its judicial system, there are significant differences in their attributes and forms. In accordance with the theory that the judicial system shall be consistent with the political system, our socialist judicial system is formed with Chinese characteristics under the People's congress system. With regard to the relationship between the People's congress and the judicial authority, the People's congress is at the top of the whole system of state power, and is the source of the power administrated by the judicial authority. The judicial authorities are constituted by, responsible for and subject to the supervision of the People's congress, but it is prohibited for the People's congress to directly handle cases, and it is inappropriate for it to supervise particular ones. In regard to the relationship between the judicial authorities and the administrative authorities, they are of parallel legal positions while independent of each other. The former is to some extent constrained by the latter, but meanwhile supervise the latter to some extent. Such supervision is

embodied by the judicial reviews on the administrative behaviors of law enforcement, courts' certain power of investigation on the administrative rules and regulations, and the procuratorial supervision on the administrative authorities and their clerks. On the one hand, the current fundamental political system and judicial system shall be adhered to; and on the other hand, successful experience of the western countries shall be drawn on to reinforce the reform of political and justice systems, coordinate the relationship between these two systems, and establish a fair, efficient and authoritative judicial system.

**Chapter 3** analyzes the relationship between the socialist rule of law and the judicial system. Rule of law, which has multi-meanings, is one approach to govern the nation or society. The ultimate difference between "rule of law" and "rule of man" does not lie in the existence of a legal system or the existence of human subjective initiative, but the premise of democracy. The rule of man is essentially autarchy, and the laws in that circumstance serve individual arbitrariness. On the contrary, in a society of the rule of law, the laws serve the democracy. In the modern western world, the fundamental characteristics of the rule of law are embodied in the supremacy of law, the constitutionalism established by the constitutional law, the restriction of governmental power, the protection of human rights by law, equality before the law, the consistency of the application of law, the transparency of law so that law is accessible to everyone, and the independence of judicial authorities. Our socialist rule of law has the following main characteristics: serving the people, adhering to the leadership of CCP, establishing a fully-fledged system of law, achieving the equal application of law, the authoritativeness of law, respecting and protecting human rights, a judicial mechanism ensuring the compliance and enforcement of the law. The judicial system has an intimate connection with the rule of law. Firstly, the administration of justice shall guarantee the proper enforcement of law. Secondly, the administration of justice shall strictly abide by the due process of law. Thirdly, the judicial





authorities shall independently exercise their authority in accordance with law and well manage the relationship between the independence of judicial power and the Party's leadership. Fourthly, the administration of justice shall practically protect human rights. Last, judicial constraints on the administrative power shall be furthered.

**Chapter 4** explores the meaning and the theoretical development of social fairness and justice, deeming that the fairness emphasizes the equality and that the justice focuses more on the reasonableness and righteousness, with emphasis on the relationship between substantial justice and procedural justice in the theory of social justice elaborated by Rawls and other scholars. The justice theories in the western society are comprehensive and historic, consisting of such contents as economic justice, political justice and legal justice. Socialism is a theory and ideal established on the sharp animadversions on social injustice and unfairness, which is consistent with the social fairness and justice. The achievement of social fairness and justice must be considered during the establishment, re-establishment and operation of the judicial system. On the one hand, the administration of justice and the judicial system should uphold the factors of social fairness and justice in the legislation and enforce such rules and provisions. On the other hand, the administration of justice and the judicial system per se should be fair and just. The administration of justice must possess the attribute of justice. In China, the following aspects shall be emphasized in the reform of current judicial system, so as to enhance the fairness and justice of the administration of justice and the judicial system: respect towards individual rights and liberty; constraints on governmental powers; equality in the application of law; establishment of the concept of modern justice among the staffs of judicial authorities; promotion of public participation in the administration of justice, and introduction of the idea of social fairness and justice into the judges' mind.

**Chapter 5** investigates the court system. In the countries with a rule-of-law system, courts are of a significant position. The basic function of courts in