PART ONE

THE FORCE OF A FORCELESS LAW
CHAPTER TWO

LEGAL NIHILISM—STATE OF EXCEPTION

Twentieth century authoritarian regimes, occupied and neutral states alike, wiped out unwanted elements through an instrumental use of the law. In 1922, the Soviet Union suspended due process rights to protect the new order from counter-revolutionary deviations. In Nazi Germany, the 1935 Nuremberg Laws were used to deprive the Israeliites of citizenship. Fascist Italy followed suit in 1938. Racial laws were issued or applied in Vichy France, Belgium, Spain, Sweden, Austria, and other countries occupied by Nazi Germany. After the Second World War, the 1948 proclamation of the state of emergency in Taiwan marked the beginning of the longest period of martial law in modern history. In the People’s Republic of China (PRC), a different path was followed. Republican legislation could have been retained and transformed in accordance with the normative values of the Chinese Communist Party. Instead, the Six Codes of the Guomindang were abrogated. Ideological reasons precluded a complete reception of Soviet legal models and institutions and thwarted early attempts at legal construction. The result was an end of law and the rise of a state of anomie that left the population exposed to raw power. Amid political purges and campaigns, neither political influence nor connections nor even the blind worship of sovereign power provided a sufficient guarantee to one’s personal safety. Economic and legal reform caused this space of lawlessness to shrink. However, the mechanisms and procedures that could lead to the suspension of legal rights were preserved. Some of them were revamped. Others were introduced once again into China’s legal system. A general suspension of the legal order can be induced by provisions on the with a state of emergency. In this respect, China’s law does not display significant differences from the law of liberal-democratic systems. However, Chinese law also contains mechanisms that can be used to suspend rights even in the absence of a general suspension of the legal order.

1 Fraser 2003.