

## ESSAY

# ECONOMIC GROWTH, DEMOCRACY, THE RULE OF LAW, AND CHINA'S FUTURE

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### INTRODUCTION

Poverty and affluence, as well as the transition from one State to the other, are assumed to have consequences that manifest themselves beyond the economic domain. This observation is valid both at micro (individual) and macro (group or societal) levels. Material conditions, whether viewed from a static or a dynamic perspective, are believed to affect human and institutional functioning in a variety of ways—negative and positive, modest and profound, simple and complex. Substantial academic resources have been devoted to exploring the many dimensions of this relationship.

It has been argued, *inter alia*, that rapid economic growth accompanied by meaningful structural shifts—“development,” “industrialization,” or “modernization”—almost invariably leads to “progress” (employing the liberal definition of the term) in the political realm.<sup>1</sup> Authoritarian regimes become less arbitrary and oppressive, and eventually they give way to systems based on the rule of law and that reflect democratic principles.<sup>2</sup> Affluence thus generates “secondary benefits”—notably in the form of political freedom, equality, and accountability (of course, the social and environmental costs should not be overlooked).<sup>3</sup>

This proposition has been addressed largely from a domestic standpoint. In recent years, however, there have been attempts to examine it in the international context. Specifically, it

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1. See, e.g., Seymour M. Lipset, *Some Social Requisites of Democracy*, 53 AM. POL. SCI. REV. 69, 75 (1959).

2. See Adam Przeworski & Fernando Limongi, *Modernization*, 49 WORLD POL. 155, 157 (1997).

3. See Lipset, *supra* note 1, at 75.

has been claimed that high standards of living are associated with a tendency on the part of countries to pursue their goals through peaceful means.<sup>4</sup> This may be partly attributable to affluence itself in that those fortunate enough to enjoy it may have *too much to lose from serious international disruption to contemplate resorting to violence in most circumstances.*<sup>5</sup> Another explanation lies in the possibility that some of the “secondary effects,” such as the rule of law and democracy, are conducive to peaceful coexistence.<sup>6</sup>

If the prevailing ideas with regard to the linkages among economic growth, political development, and non-belligerence are well-founded, it may be legitimate to adopt a basically sanguine outlook concerning the quality of life across the world and the stability of the international system. Standards of living are clearly improving on the whole, although there are obviously exceptions to the norm. Moreover, notwithstanding the adverse impact of factors somehow insulated from mainstream economic forces, e.g., religious extremism, the trend is sufficiently powerful to suggest that, on the face of it, expectations signaling that the movement toward a relatively enlightened domestic and global order will be sustained are not misplaced.<sup>7</sup>

This should have favorable implications for China, *ceteris paribus*. Unlike India, the world’s most populous country, China still relies predominantly on the “rule of man” (as distinct from the rule of law) and is by no means ready to embrace democracy.<sup>8</sup> Its foreign policy stance has not been overly aggressive for some time,<sup>9</sup> but China may have not acted, at least consistently and unambiguously so, in a manner that reflects its size and status as a leading regional power. The rapid economic growth it has experienced—a pattern that should remain intact—might thus contribute toward internal relaxation and external moderation.

Both the internal and external sides of the picture merit careful consideration. However, this Essay focuses, from a medium-term perspective (the long-term dynamics are more diffi-

4. See BRUCE RUSSETT, *GRASPING THE DEMOCRATIC PEACE* 119 (1993).

5. See, e.g., *id.* at 28-29.

6. See *id.* at 29-30.

7. See *id.* at 137-38.

8. See NEIL C. HUGHES, *CHINA’S ECONOMIC CHALLENGE 195-97* (2002).

9. See *id.* at 192-93.

cult to come to grips with), exclusively on the former. This is arguably the critical element in the equation. Tangible progress on the domestic front would be of greater significance, given the backdrop. China is so far from satisfying the "minimum" standards in this respect, even from an Asian standpoint, that it is the side that needs to be accorded a higher priority.<sup>10</sup> As indicated, internal forces can also shape events in the external arena—the relationship holds in the opposite direction as well, but apparently to a lesser extent—and this is another reason for the domestic orientation displayed in this Essay.

### I. GENERAL OBSERVATIONS

Seymour M. Lipset placed the relationship between the two key variables highlighted in this Essay—economic development and democracy—firmly on the academic agenda more than four decades ago. The eminent American political sociologist asserted in the late 1950s, in light of his extensive empirical research, that the former sowed the seeds of the latter.<sup>11</sup> This position has subsequently received reinforcement from a large number of other scholarly sources.<sup>12</sup> It has also been subjected to critical scrutiny and even seriously challenged.<sup>13</sup> Indeed, it has occasionally fallen out of favor and has at times been consigned to oblivion.<sup>14</sup> However, it has weathered the onslaughts and expressions of indifference—reemerging in an increasingly elaborate and perhaps better packaged form.<sup>15</sup>

The appeal of Lipset's hypothesis can be appreciated by studying the linkages between per capita income and the nature of the regime (ranging from authoritarian to democratic). The aggregate patterns, whether assessed informally or dissected sta-

10. See *id.* at 186.

11. See SEYMOUR M. LIPSET, *POLITICAL MAN* (1981); see also Lipset, *supra* note 1, at 69.

12. See generally REEXAMINING DEMOCRACY: ESSAYS IN HONOR OF SEYMOUR MARTIN LIPSET (Gary Marks & Larry Diamond eds., 1992) [hereinafter REEXAMINING DEMOCRACY].

13. See Zehra F. Arat, *Democracy and Economic Development: Modernization Theory Revisited*, 21 COMP. POL. STUD. 21, 30 (1988); see also Lev S. Gonick & Robert M. Rosh, *The Structural Constraints of the World Economy on National Political Development*, 21 COMP. POL. STUD. 171, 189 (1988).

14. See Arat, *supra* note 13, at 34.

15. See generally REEXAMINING DEMOCRACY, *supra* note 12.

tistically, provide solid support for his theory.<sup>16</sup> At that level, the factual evidence is simply overwhelming and there are no compelling grounds to dismiss it as spurious. The sole reason for possibly injecting a note of caution into the argument is that the aggregate patterns may obscure different configurations that could be discerned by probing deeper below the surface.

Such probing does not constitute an entirely unproductive exercise for if nothing else, it introduces a degree of complexity into what may legitimately be portrayed as a one-dimensional picture. Specifically, by broadening the analytical framework and engaging in multi-level scanning, one may detect variations indicative of a potentially more intricate conceptual structure than originally assumed. Perhaps most importantly, it becomes apparent that the positive relationship between economic development and political liberalization may not necessarily hold in all circumstances or that it may need to be qualified in order to render it better capable of explaining specific cases which, on the face of it, do not seem to fit into the mold.

On this basis, it may thus be possible to posit that democracy may take root as countries experience economic development or, alternatively, that it may be the result of other influences, while at the same time more likely to endure in developed countries. These are two distinct theoretical perspectives, albeit by no means mutually exclusive ones. The former is referred to as "endogenous" and the latter is referred to as "exogenous."<sup>17</sup> The Lipset formulation may hence not encompass all contingencies. While it has been refined over the years, it falls more readily into the endogenous category.

Because one is faced with just two regime types, it may be concluded that democracies come into existence as dictatorships fade away. To argue Lipset-style that democracies are the by-product of economic development is equivalent to claiming that dictatorships disintegrate as countries controlled by them progress on the economic front. This claim has a salient sociological dimension in that it reflects the observation that, as standards of living improve, the social structure grows in complexity and

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16. See Ross E. Burkhardt & Michael S. Lewis-Beck, *Comparative Democracy*, 88 AM. POL. SCI. REV. 903, 906 (1994).

17. See Przeworski & Limongi, *supra* note 2, at 156-57.

turns more fluid.<sup>18</sup> Pockets of autonomy emerge (capital, labor, the skilled professions) and information begins to circulate freely.<sup>19</sup> Dictatorial power is difficult to exercise effectively in such an environment.<sup>20</sup>

The endogenous perspective is a variant of “modernization” theory. The underlying premise is that there is one general social process that culminates in full-fledged democracy.<sup>21</sup> Modernization consists of a gradual differentiation and specialization of social structures that leads to a decoupling of political elements from other parts of the edifice and paves the way for democracy.<sup>22</sup> The specific causal chains feature interaction among variables such as industrialization, urbanization, communication, mobilization, and political incorporation—with the equation moving inexorably toward its final destination: democracy.<sup>23</sup>

Yet, one may consider the idea that dictatorships are equally likely to fade away and democracies to come into existence at any level of development. A host of other relevant factors could be at work, while economic forces, the pillars of modernization, play no decisive role. After all, it has been noted that some key European countries democratized because of wars, rather than as the inevitable outcome of economic development,<sup>24</sup> and a similar pattern was witnessed in the wake of the Argentinian defeat in the Malvinas/Falklands and elsewhere.<sup>25</sup> It is also not uncommon for an authoritarian regime to collapse following the death of a well-entrenched founding dictator (post-Franco Spain being an obvious example) or due to an internal or external shock (economic crisis, foreign pressures, etc.).<sup>26</sup>

If dictatorships fade away and democracies come into existence randomly in relation to development, this would not necessarily be inconsistent with the observation that there are more democracies among affluent countries than among poor ones.

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18. *See id.*

19. *See id.* at 157.

20. *See id.*

21. *See id.* at 158.

22. *See id.*

23. *See id.*

24. *See id.*

25. *See* Goran Therborn, *The Rule of Capital and the Rise of Democracy*, *NEW LEFT REV.*, May-June 1977, at 3, 19-27.

26. *See* Przeworski & Limongi, *supra* note 2, at 158.

The point is that even if the emergence of democracy is independent of the level of development, the probability of such a regime enduring may be greater if it has been established in an environment characterized by high standards of living. One would thus expect a pattern whereby democracies emerge randomly with regard to levels of development, but crumble in the poorer countries and endure in the wealthier ones. Democracy hence materializes exogenously as a *deus ex machina*. It endures if a country is modern, yet it is not the inescapable effect of modernization.<sup>27</sup>

Those who examine political reality from an exogenous perspective accord considerable weight to shocks, both internal and external, in explaining the transition from authoritarianism to democracy and reversals encountered in the process.<sup>28</sup> It should be emphasized, however, that they view such shocks as a source of instability rather than merely as a catalyst for liberal metamorphosis.<sup>29</sup> On the negative side, shocks may account for the fragility of democratic institutions in poor countries. Such countries are particularly susceptible to economic crises, which undermine the delicate social fabric and hinder political progress.<sup>30</sup>

One need not undergo a full conversion to exogenous logic to question, mildly or otherwise, the assumptions underlying its endogenous counterpart. Some researchers thus argue that the co-movement on the economic and democratic fronts may not necessarily follow a linear path.<sup>31</sup> At the intermediate stages of modernization, during which the rate of output expansion—and the pace of social change in general—accelerates, political regimes that are subject to competitive pressures may falter.<sup>32</sup> This may well prove to be a temporary phase and one should not re-

27. *See id.* at 158-59.

28. *See* Larry Diamond, *Introduction: Persistence, Erosion, Breakdown, and Renewal*, in *DEMOCRACY IN DEVELOPING COUNTRIES: LATIN AMERICA* 1, 38 (Larry Diamond et al. eds., 1989).

29. *See id.* at 38-39.

30. *See id.* at 34.

31. *See* SAMUEL P. HUNTINGTON, *POLITICAL ORDER IN CHANGING SOCIETIES* 6 (1968); *see also* GUILLERMO O'DONNELL, *MODERNIZATION AND BUREAUCRATIC AUTHORITARIANISM: STUDIES IN SOUTH AMERICAN POLITICS* 5 n.8 (1973).

32. *See* HUNTINGTON, *supra* note 31, at 49-53; *see also* O'DONNELL, *supra* note 31, at 6-8, 74-76.

ject the endogenous perspective on that basis. Nevertheless, an adjustment to the overall architecture may be warranted.

The criticisms and proliferation of alternative models have barely made a dent in the endogenous façade. It remains by far the most effective analytical tool for explaining the emergence and persistence of democratic structures.<sup>33</sup> The new endogenous explanatory frameworks do not correspond in every respect to their predecessors. There is currently a tendency to proceed from the point of origin (economic development) to the final destination (democracy) indirectly rather than directly.<sup>34</sup> Political theorists who adopt this perspective stress particularly the role of intervening variables, such as economic equality or inequality, through which the forces of modernization apparently exert their influence.<sup>35</sup>

Some even produce evidence in support of the contention that democracy is not "caused" by rising per capita income (a proxy for development) per se, but by other changes, which materialize in the course of modernization—increasing economic equality being the most prominent.<sup>36</sup> A number of reasons have been offered for this phenomenon. One qualifies as unconventional in that it centers on shifts in the political power dynamics:

As countries develop, incomes become more equally distributed. Income equality means that the redistributive scheme that would win democratic support (the one supported by the median voter) would deprive the rich of less income than the one the median voter would support if income distribution were highly unequal. Hence the rich find a democratic tax structure to be less expensive for them as their country gets wealthier, and they are more willing to countenance democratization.<sup>37</sup>

Such enhancements have enriched the endogenous perspective and have reinforced its dominant position in this theoretical domain.<sup>38</sup> Nevertheless, the competing, less deterministic models have by no means receded into the background and con-

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33. See Carles Boix & Susan C. Stokes, *Endogenous Democratization*, 55 *WORLD POL.* 517, 519, 531, 545 (2003).

34. See *id.* at 540-44.

35. See *id.* at 540, 543-44.

36. See CARLES BOIX, *DEMOCRACY AND REDISTRIBUTION* 1, 19-20 (2003).

37. Boix & Stokes, *supra* note 33, at 539-40.

38. See TATU VANHANEN, *PROSPECTS OF DEMOCRACY* 21 (1997).

tinue to command scholarly attention.<sup>39</sup> The notion of exogenous change is intuitively too appealing to be dismissed lightly. Structural shifts in the political arena may be induced by stimuli originating outside the powerful modernization engine in certain circumstances.<sup>40</sup> Indeed, to deny actors in that arena any measure of discretion does not seem to be a very realistic proposition.

Exogenous-type, agent-centric explanatory frameworks perhaps swing excessively in the opposite direction by portraying democracy as principally the result of discretion exercised by elites across the political spectrum.<sup>41</sup> Such players may proceed deliberately toward that goal, albeit in a strategically complex fashion (featuring elaborate maneuvers and bargaining), irrespective of the stage of economic development (or, for that matter, prevailing institutional configuration).<sup>42</sup> Whether or not one is inclined to embrace wholly radical departures of this variety from the endogenous norm, they at least serve the purpose of allowing students of the politico-legal scene in rapidly growing China to approach claims that the country is destined to evolve before long into a rule-driven democracy with a modicum of healthy skepticism.

## II. *THE CHINA CONTEXT*

The endogenous perspective reigns supreme, without necessarily restricting unduly the scope for other viewpoints, because no factor may account for the emergence and persistence of democracy over time as well as economic development.<sup>43</sup> Given this pattern and the spread of modernization from the "core" of the international system to its "periphery"—notably, against the backdrop of market liberalization and globalization—there has been an increasing optimism about the outlook

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39. See generally Przeworski & Limongi, *supra* note 2.

40. See Laurence Whitehead, *Three International Dimensions of Democratization*, in *THE INTERNATIONAL DIMENSIONS OF DEMOCRATIZATION* 3, 5-22 (Laurence Whitehead ed., 1996) (discussing military invasions as well as more indirect forms of outside coercion or influence).

41. See Adam Przeworski, *Some Problems in the Study of the Transition to Democracy*, in *TRANSITIONS FROM AUTHORITARIAN RULE: COMPARATIVE PERSPECTIVES* 47, 53-56 (Guillermo O'Donnell et al. eds., 1986).

42. See *id.*

43. See VANHANEN, *supra* note 38, at 21.



for regimes governed by democratic principles.<sup>44</sup> This optimism has not been without justification, both quantitatively and qualitatively speaking.<sup>45</sup>

Liberal-minded political theorists also draw comfort from exogenous trends when contemplating the prospects for democracy. The systematic loosening of economic controls and persistent lowering of barriers to the flow of goods, services, and capital, as well as dramatic advances in information technology, have been responsible for transforming the previously decentralized network of States into a more tightly integrated structure, akin to the proverbial "global village," and have rendered it difficult for individual countries to exercise a high degree of freedom in shaping the evolution of their political systems.<sup>46</sup> There has been a diffusion of mostly progressive ideas from one part of the world to another (predominantly from the core to the periphery), assuming at times the form of a "contagion."<sup>47</sup>

The ideas have normally traveled through "neutral" channels, i.e., in a generally unplanned and ostensibly non-coercive manner.<sup>48</sup> The active promotion of democracy across borders has not been an insignificant phenomenon, however, involving the selective use of negative sanctions (broadly defined to encompass violent means) and positive reinforcement.<sup>49</sup> Conditionality has been a particularly interesting variant of this strategy, employed consistently by multilateral institutions, such as the Council of Europe, the European Community, and the International Monetary Fund, which tend to attach specific (political, but not exclusively so) conditions to the distribution of concrete benefits to recipient countries.<sup>50</sup>

Another development viewed positively by students of democracy is the emergence of elites ("agents") committed to politico-economic modernization.<sup>51</sup> It is a moot point whether this is an exogenous factor, as is commonly assumed, or an endogenous one in that the players in question could be regarded as

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44. *See id.* at 166-69.

45. *See id.* at 67-79.

46. *See* Whitehead, *supra* note 40, at 18-19.

47. *See id.* at 5-8, 21.

48. *See id.* at 6.

49. *See id.* at 14.

50. *See id.* at 30, 42.

51. *See* GUILLERMO O'DONNELL ET AL., TRANSITIONS FROM AUTHORITARIAN RULE: TENTATIVE CONCLUSIONS ABOUT UNCERTAIN DEMOCRACIES 41 (1986).

the product of their environment—international as well as domestic—rather than as inner-driven architects of change. Be that as it may, there have been several examples of elite-engineered political liberalization in recent years (the Gorbachev “revolution” probably qualifies as the most memorable), including in Asia, e.g., South Korea.<sup>52</sup> Indeed, some social scientists argue that the pattern witnessed is sufficiently well-established to be depicted in game-theoretic terms.<sup>53</sup> They thus proceed to dissect it by focusing on the strategic interaction, in the course of the transition from authoritarian rule to democracy, between the ruling elite (hardliners and softliners) and the opposition elite (moderate democrats and extreme democrats).<sup>54</sup>

Agent-centric explanations find favor among observers of the contemporary political scene in China. They lay particular emphasis on the role of Deng Xiaoping, the paramount leader who abandoned Mao Zedong’s radical experiments and adopted more liberal and outward-looking policies.<sup>55</sup> Two of his early initiatives have had far-reaching consequences: agricultural reform and the open-door strategy. The former turned millions of landless peasants into landowners or equivalent, effectively elevating each of them to the status of an independent farmer.<sup>56</sup> The latter transformed key coastal areas into platforms for foreign investment, encouraging them to overhaul their ossified economic systems in the process.<sup>57</sup> These two initiatives have propelled the country toward capitalism, albeit with “Chinese” characteristics.<sup>58</sup>

A notable feature of the sweeping restructuring that has ensued has been the restoration of private enterprise and private property rights across the industrial spectrum beyond agriculture.<sup>59</sup> Not surprisingly, given the policy thrust, the private sector has outpaced its public counterpart by a wide margin and, as

52. See ADAM PRZEWORSKI, *DEMOCRACY AND THE MARKET* 60 (1991); see also Whitehead, *supra* note 40, at 361-67, 370-73.

53. See *id.* at 61-66.

54. See PRZEWORSKI, *supra* note 52, at 61-66.

55. See HUGHES, *supra* note 8, at 7.

56. See YANLAI WANG, *CHINA’S ECONOMIC DEVELOPMENT AND DEMOCRATIZATION* 113 (2003).

57. See *id.* at 122-27.

58. See HUGHES, *supra* note 8, at 187-89.

59. See WANG, *supra* note 56, at 166-67.

matters stand, overshadows it in many respects.<sup>60</sup> Among other things, the private sector is the dominant force in consumer goods retailing and industrial production.<sup>61</sup> It is also a major source of employment in both rural and urban areas.<sup>62</sup> Last but not least, it accounts for a larger portion of the gross domestic product than the rapidly shrinking—in relative terms—public sector.<sup>63</sup>

Deng's economic reforms were by far the most radical, but his initiatives were not confined to this particular area. From an agent-centric perspective, Sinologists highlight the importance of his efforts to build a contingent of cadres capable of implementing his vision over a long period of time.<sup>64</sup> He relied on a three-pronged strategy to achieve this objective: (1) placing his protégés, such as Hu Yaobang and Zhao Ziyang, in key positions of power; (2) rehabilitating old cadres who were marginalized during the Cultural Revolution; and (3) identifying promising young cadres and promoting them, when and where appropriate, to positions vacated by their old counterparts.<sup>65</sup>

Needless to say, these measures were partly taken in order to solidify Deng's power base at the start of the post-Mao era. Nevertheless, the desire to create an institutional mechanism for sustaining the reform program over several generations was paramount. This, however, was not the sole initiative of that kind. Deng embraced the de-personalization and re-institutionalization of Chinese politics as a goal and moved consistently in this direction—albeit varying the pace on tactical grounds—by endeavoring to revive formal institutions at national, regional, and local levels and inject a modicum of accountability and even transparency into the public decision-making process.<sup>66</sup> This pattern has remained intact following his death, possibly suggesting that democracy will materialize before long.<sup>67</sup>

The endogenous side of the picture is viewed as more, rather than less, reassuring. Deng may have provided the initial

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60. *See id.*

61. *See id.*

62. *See id.*

63. *See id.*

64. *See id.* at 104-05.

65. *See id.*

66. *See id.* at 113, 224-25.

67. *See id.* at 140.

impetus for multi-faceted structural transformation, but events may have overtaken his vision. Politico-economic evolution may be faster, broader, and deeper than he anticipated. China seems to be progressing in accordance with the logic of modernization theory and the Communist Party leadership is playing a largely reactive role.<sup>68</sup> It may engage in policy fine-tuning; yet, the prevailing opinion is that, absent a dictatorial counter-revolution—a highly unlikely prospect—the room for maneuver that China enjoys at this stage of development is distinctly limited. It may not be able to switch course, but merely to “lean against the wind.”<sup>69</sup>

The constraints are apparently becoming increasingly evident at the grass-roots level. Modernization may have reshaped the social environment to a point whereby people in all walks of life are displaying attitudes that are not consistent with those traditionally attributed to them by students of Chinese political culture.<sup>70</sup> Authoritarianism, fear of politics, ignorance of politics, intolerance, and passivity seem to have diminished significantly.<sup>71</sup> Instead, one observes greater assertiveness, critical disposition, liberalism, open-mindedness, and a sense of independence.<sup>72</sup> The sentiments exhibited may be converging rapidly with those seen in democratic settings.<sup>73</sup>

Such attitudinal shifts often herald the erosion of the legitimacy of authoritarian regimes, eventually bringing about their demise. This pattern was witnessed in South Korea in the late 1980s, when a powerful mass movement played a pivotal role in remodeling the political system.<sup>74</sup> The Chinese ruling elite proved more resilient during the same period in the face of student protest at Tiananmen Square.<sup>75</sup> Yet, it has been suggested that such a violent response, and subsequent consolidation of power, would have probably been impossible in the present cultural climate or at the current stage of development.<sup>76</sup>

68. See RANDALL PEERENBOOM, *CHINA'S LONG MARCH TOWARD RULE OF LAW* 190 (2002); see also WANG, *supra* note 56, at 224.

69. See HUGHES, *supra* note 8, at 185; see also WANG, *supra* note 56, at 225.

70. See ANDREW J. NATHAN, *CHINESE DEMOCRACY* 235-55 (1986).

71. See WANG, *supra* note 56, at 192-211.

72. See *id.*

73. See *id.*

74. See RONALD INGLEHART, *MODERNIZATION AND POSTMODERNIZATION: CULTURAL, ECONOMIC, AND POLITICAL CHANGE IN 43 SOCIETIES* 179 (1997).

75. See WANG, *supra* note 56, at 128.

76. See *id.* at 184.

There are thus compelling arguments in support of the proposition that China is in the midst of a transition that will inevitably culminate in the adoption of democratic ideals and the institutions embodying them. After all, the vision of Deng Xiaoping, the architect of the post-1998 modernization drive, and even that of Mao Zedong, the consummate practitioner of "perpetual revolution," incorporated elements of this scenario ("full trust in the general public," "seeking truth from facts," and "promoting democracy").<sup>77</sup> Those who subscribe to it may indeed turn out to be right in the long run. The question is whether that is a realistic prospect from a medium-term (five to ten-year) perspective.

The exogenous notion of a cohesive army of cadres firmly committed to liberalization across the policy spectrum may legitimately be challenged. As Harry Harding has observed, political reform is underway, but its pace has been slow. He has noted the following developments over the past two decades: The principal goal of the Communist Party is now to promote economic development, rather than foster continual class struggle, as was the case during the Maoist era.<sup>78</sup> By the same token, the ruling elite is more technocratic and more civilian in character.<sup>79</sup> A large number of officials have tertiary education, albeit primarily of the engineering variety.<sup>80</sup> Significantly, fewer and fewer positions in the Politburo and the Central Committee, let alone the State Council, are occupied by the previously omnipresent military.<sup>81</sup> The bureaucracy formulates alternative strategic options with meaningful input from specialists in research institutions and universities.<sup>82</sup> The options generally reflect a preference for cautious, incremental, and pragmatic approaches to policy management, rather than utopian designs to overhaul the social structure.<sup>83</sup>

The legal system is also being gradually enhanced. The State does not just increasingly govern through the adoption

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77. See NATHAN, *supra* note 70, at 7; see also WANG, *supra* note 56, at 224-25.

78. See Harry Harding, *The Halting Advance of Pluralism*, 9 J. DEMOCRACY 11, 12 (1998).

79. *See id.*

80. *See id.*

81. *See id.*

82. *See id.*

83. *See id.*

and implementation of laws and regulations, but those legal instruments are beginning to constrain State behavior.<sup>84</sup> Even the most strategically placed officials are subject to limited terms of office.<sup>85</sup> Citizens are suing the State for malfeasance.<sup>86</sup> Courts are occasionally overturning the recommendations of State prosecutors.<sup>87</sup> Elsewhere in the public domain, credible elections are becoming common in rural areas.<sup>88</sup> The process is largely confined to executive membership in village councils, yet it extends selectively to legislative bodies at higher levels.<sup>89</sup> In several places, the elections appear to be more competitive and the nomination exercise less tightly controlled by the Party than originally envisioned.<sup>90</sup>

Legislatures can scarcely be portrayed as independent, but they display greater initiative than in the past, particularly at the provincial and national levels. Meetings are held more or less regularly, and the National People's Congress has a reasonably effective committee and staff structure.<sup>91</sup> Occasionally, legislatures reject Party nominees to executive positions, and delay or modify proposals originating from bureaucratic/Party sources.<sup>92</sup> In addition, there has been a proliferation of non-governmental organizations, especially professional associations and entities geared to the provision of social services.<sup>93</sup>

To conclude that such modest displays of professional orientation, respect for due process, or pluralistic spirit amount to a manifestation of a strong determination to carry out systematically far-reaching democratic reforms in the foreseeable future, however, would arguably qualify as a poorly-timed quantum leap of faith. China's ruling elite has had ample opportunity to demonstrate its commitment to a moderate liberal agenda in the Hong Kong—and, to a lesser extent, Taiwan—context. Yet, at every juncture, it has failed to respond in a reassuring fashion to the challenge, invariably opting to hinder progress toward de-

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84. *See id.*

85. *See id.*

86. *See id.*

87. *See id.*

88. *See id.*

89. *See id.*

90. *See id.*

91. *See id.*

92. *See id.*

93. *See id.* at 13.

mocracy, often employing heavy-handed tactics in the process, rather than to facilitate it in a balanced manner.<sup>94</sup>

For this reason, it may be appropriate to continue to equate the present political configuration in China with "market-preserving authoritarianism."<sup>95</sup> This term is used to capture the essence of a regime resting on twin pillars that are normally thought to be conflicting, as distinct from merely non-identical: political authoritarianism and preference for free markets. Such a combination is quite common from a historical perspective. It has prevailed in Meiji, Japan; the German Second Reich; the pre-democratized "four little dragons" in East Asia (Hong Kong, Singapore, South Korea, and Taiwan) from the early 1960s to the late 1980s; Franco's Spain in the 1960s and the early 1970s; Botswana, Indonesia, Malaysia, and Thailand since the 1970s; and Chile and Ghana since the 1980s.<sup>96</sup>

Indeed, some Sinologists, admittedly a minority, claim that the current Chinese institutional set-up has not yet evolved to a point whereby it can be identified, in an unqualified fashion, with market-preserving authoritarianism.<sup>97</sup> In the industrial realm, the reassignment of decision rights and residual claims from the central agent (government) to the inside members of the firm (managers and workers) has afforded the latter a degree of discretion. Nevertheless, the incentive structure has not been reshaped sufficiently to produce dramatic results. Moreover, further headway on that front hinges on an effective transfer of authority for selecting managers from bureaucrats to capitalists, or a wholesale privatization of State-owned enterprises, and the ability and willingness of the central agent to confront this challenge decisively remains uncertain.<sup>98</sup>

Market-preserving authoritarianism need not be harsh in nature. Rather, it may evolve into a "softer" variety. This appears to be the direction in which China is presently headed. An unmistakable shift may be discerned from an "uninhibited politi-

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94. See Miron Mushkat & Roda Mushkat, *The Political Economy of Constitutional Conflict in Hong Kong*, 11 TILBURG FOREIGN L. REV. 756, 757 (2003).

95. Miron Mushkat, *Economic Reform, Discontinuous Change, and China's Future*, 2 PERSP. GLOBAL DEV. & TECH. 255, 261 (2003) (quoting Shuhe Li & Peng Lian, *Decentralization and Coordination: China's Credible Commitment to Preserve the Market Under Authoritarianism*, 10 CHINA ECON. REV. 161, 168 (1999)).

96. See *id.* at 261-62.

97. See *id.* at 262.

98. See *id.*

cal center with transformative policies toward an inhibited center with accommodative policies."<sup>99</sup> The former constitutes the core of a totalitarian State seeking to purify morally the inner lives of its citizens. The latter serves as the mainstay of an authoritarian regime to which the Chinese people have long been accustomed. It existed in Taiwan before the democratization of the last two decades and in China during many centuries of the imperial era.<sup>100</sup>

The inhibited center is organizationally incapable of closely directing the activities of citizens. They view it as promulgating an essentially correct doctrine, which it cannot implement fully.<sup>101</sup> It thus enjoys a form of fragmentary legitimacy and operates in an ideologically eclectic fashion.<sup>102</sup> The ambiguities and contradictions to which this pattern gives rise notwithstanding, it achieves stability by forbidding resolutely what would qualify as free political activity. There is no solid evidence to suggest that the ruling elite is pursuing a strategic agenda whose ultimate purpose is to convert the inhibited center into a "subordinated" one, i.e., an institution guided by the freely expressed will of the voters.<sup>103</sup>

The path taken seems to lead to a configuration best described as "authoritarian pluralism." This regime type may be defined as a system wherein political life remains under the unchallenged control of a dominant-party or single-party apparatus. Strict limits are placed on liberty (albeit with some possible circumstantial variations) and military or national security organs monitor socio-political trends carefully. At the same time, however, a civil society is allowed to function apart from the State. The various segments of this social body exercise a certain degree of autonomy and are thus able to reflect diverse interests. Moreover, the economy is mixed, with the market playing an increasingly pivotal role.<sup>104</sup>

Cultural transformation has not reached a stage whereby relentless demands for radical change could undermine the status

99. Thomas A. Metzger, *Sources of Resistance*, 9 J. DEMOCRACY 18, 20 (1998).

100. *See id.*

101. *See id.*

102. *See id.*

103. *See id.*

104. See Robert A. Scalapino, *Current Trends and Future Prospects*, 9 J. DEMOCRACY 35, 38 (1998).



quo. The attitudinal patterns seen in public opinion surveys conducted in recent years differ markedly from those witnessed a decade or so ago.<sup>105</sup> Chinese people display positive self-consciousness on a scale that is remarkable by previous standards.<sup>106</sup> They also appear to favor a freer press, greater reliance on the rule of law, and less passive legislatures.<sup>107</sup> The sentiments exhibited are, however, broadly consistent with authoritarian pluralism of the benevolent variety (a lapse into malevolence could prove problematic), and there are no clear indications of rapidly growing support for independent political organizations and competitive elections.<sup>108</sup>

Thomas Metzger has suggested that the Taiwan experience, while illuminating, may not provide an appropriate basis for extrapolation in this case. After all, as Metzger has noted, Taiwan embarked on its modernization drive with an inhibited political center, whereas the mainland took the same step with a distinctly uninhibited one.<sup>109</sup> The powers that be in Beijing also enjoy the dignity derived from their status as the rulers of a unified China at peace ("the mandate of Heaven"), while their Taipei counterparts had less room for maneuver because of the lack of this dignity and to rising Taiwanese nationalism.<sup>110</sup>

Another notable difference lies in the ideological contexts of the two regimes. The Maoist ideology drew strength (it still selectively does) from Mao's charisma, the powerful saga of the communist revolution, and the prestige of Marxism as a philosophy not merely in accord with the revered May Fourth Movement but one viewed seriously in intellectual circles, East and West.<sup>111</sup> By contrast, Taiwan's Sunist ideology was at odds with the May Fourth spirit, commanded no worldwide attention, and was an eclectic mode of thought much more compatible with the acceptance of market-embedded logic than the ideological mosaic observed in China.<sup>112</sup>

Further, by incorporating the ideal of democracy and en-

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105. See WANG, *supra* note 56, at 207.

106. See *id.* at 207.

107. See Harding, *supra* note 78, at 15.

108. See *id.* at 15.

109. See Metzger, *supra* note 99, at 23.

110. See *id.* at 23.

111. See *id.*

112. See *id.* at 23-24.

dorsing the Confucian tradition with its propensity toward “protest in the name of righteousness,” Sunism was rhetorically vulnerable to a process of spiritual mobilization aimed at securing universal franchise.<sup>113</sup> Thus, arguments in favor of political gradualism are quite respectable in China today, and are even advanced comfortably by academic analysts and independent professionals, but such arguments in authoritarian Taiwan could be put forward only by those brave enough to incur the wrath of “true intellectuals” demanding democracy.<sup>114</sup>

From an external perspective, Taiwan was considerably more influenced by American culture than China has been or is likely to be, and its precarious international position rendered it highly vulnerable to liberal pressures from Washington (the administration and the U.S. Congress) and U.S. media.<sup>115</sup> In Taiwan, some key political groups were also attracted to the post-World War II Japanese model and shared democratic ideals with liberal circles in Japan.<sup>116</sup> Perhaps even more significant was the desire of the Taipei ruling elite, at least by the 1980s, to “upstage” the mainland by successfully importing Western-style capitalism and democracy.<sup>117</sup> Its Beijing counterpart displays far greater ambivalence toward symbols of Western civilization.<sup>118</sup>

For the latter, importation of ideas has the humiliating implication that the mainland is merely following in Taiwan’s footsteps. The vision it prefers is that of “transcending the West” (and, of course, Taiwan) by realizing a version of modernity different from and superior to the Western variety.<sup>119</sup> By the same token, the dark Chinese image of the West as a developmental model to be avoided has been much more prominent in mainland than in Taiwanese intellectual and policy circles.<sup>120</sup> This less-than-appealing image also meshes with a nationalistic outlook fairly common on the mainland but quite rare in Taiwan. According to this view, China rivals the United States as a Nation projecting its power abroad to an excessive degree.<sup>121</sup>

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113. *See id.* at 24.

114. *See id.*

115. *See id.*

116. *See id.*

117. *See id.*

118. *See id.*

119. *See id.*

120. *See id.*

121. *See id.*

China's size and the complexity of the problems it confronts widen the gap to a point whereby the quest for a potentially credible historical analogy simply reaches an analytical cul-de-sac. After all, most of the mainland provinces have a population larger than Taiwan.<sup>122</sup> To make matters worse, its impressive post-1978 record notwithstanding, China faces daunting obstacles to continued rapid economic expansion: shortages of arable land and potable water; bottlenecks in agriculture, education, and energy; vast quantities of surplus labor; serious air, soil, and water pollution; and a steadily aging workforce.<sup>123</sup>

Removing these obstacles will require massive financial resources. Yet, despite its high savings rate, strong export performance, and enormous foreign-exchange reserves, China's banking system verges on insolvency, and its fiscal apparatus extracts distinctly modest tax revenues relative to gross domestic product ("GDP").<sup>124</sup> To address these challenges responsibly through more stringent financial discipline would almost certainly mean lower growth and higher unemployment. To address them irresponsibly through lax fiscal and lending policies would inevitably lead to galloping inflation, followed by social instability. A ruling elite sensitive to the risks involved is not likely to pursue political decentralization in a determined fashion and, barring a severe crisis of confidence, the clamor for democracy emanating from the grass-roots may remain muted.<sup>125</sup>

The endogenous side of the picture may also be more complicated than generally assumed. The collapse of communist dictatorships in the Soviet Union and Eastern Europe may have been the result of their failure to fulfill their part of the "social contract."<sup>126</sup> As has been amply documented, the fusion of economics and politics under communism in that part of the world turned the persistent inability to satisfy economic needs into a moment of political opportunity, precipitating the disintegration of authoritarian regimes (an exogenous shock paving the way for endogenous transformation).<sup>127</sup>

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122. See Harding, *supra* note 78, at 15.

123. See *id.* at 15.

124. See *id.* at 15-16.

125. See *id.* at 16.

126. See Mary E. Gallagher, *Reform and Openness: Why China's Economic Reforms Have Delayed Democracy*, 54 *WORLD POL.* 338, 338 (2002).

127. See VALERIE BUNCE, *SUBVERSIVE INSTITUTIONS: THE DESIGN AND THE DESTRUC-*

The interplay between economics and politics followed a different pattern in East Asia (more consistent with the classical endogenous model), but the overall social dynamics assumed a broadly similar form in that stimuli originating from the economic arena provided the impetus for changes on the political front. Spectacular output expansion sowed the seeds of all-embracing modernization, culminating in the adoption of democratic institutions.<sup>128</sup> A burgeoning middle class was a notable by-product of the process and so was the rise of social movements concerned with the negative externalities of uncontrolled growth, including environmental degradation, government corruption, and labor exploitation.<sup>129</sup>

The relationship between economics and politics has proved more ambiguous in the Chinese context. The open-door strategy has been the centerpiece of the reform program. The liberalization of foreign direct investment ("FDI") thus constituted the first and most crucial step in the gradual dismantling of the command economy.<sup>130</sup> Unlike in the Soviet Union/Russia, Eastern Europe, and East Asia, neither the privatization of State-owned enterprises nor the development of an indigenous business class loomed large on the policy agenda during the early phases of modernization.<sup>131</sup> Even at this late juncture, progress in this direction remains halting.<sup>132</sup>

The contrast with the experience of the other East Asian countries—Japan, Korea, and Taiwan—is particularly noteworthy. Although their growth trajectories and industrial structures are by no means uniform, the economies in the region were built on a strong domestic business class, often closely allied with

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TION OF SOCIALISM AND THE STATE 131 (1999) (noting that the fusion between politics and economics redistributed power along with economic resources, thus allowing socialist societies to become more autonomous and powerful when bargaining with the party-State); see also KATHERINE VERDERY, *WHAT WAS SOCIALISM AND WHAT COMES NEXT?* 33 (1996) (discussing how "political capitalists" exploited shortages to their own political gain).

128. See Harold Crouch & James W. Morley, *The Dynamics of Political Change, in DRIVEN BY GROWTH: POLITICAL CHANGE IN THE ASIA PACIFIC REGION* 313, 327 (James W. Morley ed., 1999) (finding that economic expansion tipped the internal balance of power, causing authoritarian rule to give way to fundamental democratic transformations in several Asian Pacific countries).

129. See *id.* at 324-25.

130. See Gallagher, *supra* note 126, at 339.

131. See *id.* at 361-70.

132. See *id.* at 371-72.

an interventionist State.<sup>133</sup> Foreign participation was extremely low despite the pronounced export-orientation displayed in each case.<sup>134</sup> Most notably, FDI was strictly controlled and deliberately relegated to the industrial periphery.<sup>135</sup> As pointed out, China has opted to follow a different path, liberalizing access for foreign capital but stifling its domestic counterpart.<sup>136</sup>

This has had the effect of limiting and delaying democratic reforms, at least in the medium-term. The business classes in Korea and Taiwan may have not played the historical role of ideologically-enlightened bourgeoisie, as witnessed in similar circumstances in Europe, but their increasing autonomy rendered the "united front" of authoritarian government and domestic capitalism eventually untenable.<sup>137</sup> In China, however, the private sector is ill-equipped to act as an agent of social change. Relatively modest in size and heavily dependent on local government support for survival, it really still is in its infancy, aggregate statistics suggesting otherwise notwithstanding.<sup>138</sup> In surprisingly intriguing ways, FDI has thus become a substitute for domestic private enterprise, reinforcing rather than undermining the political status quo.<sup>139</sup>

The unconventional sequencing of economic reforms (FDI first, privatization later) has hindered progress toward democracy in another, equally important, respect. The foreign-invested sector of the economy has been transformed into a laboratory of capitalism. Its dynamism has provided the State with sufficient political space to enact difficult and destabilizing reforms without provoking a backlash.<sup>140</sup> In addition, key elements of society that stood to lose substantially from economic restructuring, particularly the urban working class, have been fragmented in the process and have not been able to operate as a cohesive political force. FDI has unleashed powerful competitive pressures among regions, industries, firms, professions, and employees within organizations, diluting significantly the power

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133. *See id.* at 345.

134. *See id.*

135. *See id.* at 345-55.

136. *See id.* at 345.

137. *See id.* at 346.

138. *See id.*

139. *See id.*

140. *See id.* at 355-56.

base of segments of society potentially capable of challenging the regime.<sup>141</sup>

The FDI-centered strategy of development has also resulted in great inequalities, particularly among different parts of the country (the disparities between the coastal areas and the hinterland being perhaps the most striking).<sup>142</sup> Convergence theorists argue that this is a natural phenomenon and that the gap will narrow over time due to the inevitable acceleration in growth of the poorer regions.<sup>143</sup> Analysts who favor the inverted U-curve hypothesis and view development as a seesaw process featuring shifts in the position of leading and lagging regions are not unduly concerned either.<sup>144</sup> They acknowledge that the swings are triggered by two opposite sets of forces, known as “spread” and “backwash,” or alternatively “trickling down” and “polarization” effects, but tend to assume that the ones supporting the eradication of inequalities—namely, spread/trickling down—will prevail in the China context.<sup>145</sup>

This may well prove to be the case in the long run when the country enters a more mature stage of economic growth. As matters stand, however, regional disparities are very wide and government policy is not geared sufficiently to minimizing, let alone eliminating, them.<sup>146</sup> Lack of resolve is merely one aspect of the problem, because it is a moot point whether the capabilities exist to address the challenge effectively. The pattern is thus likely to persist for the foreseeable future.<sup>147</sup> And as long as it does, the Chinese modernization drive will probably continue to feature further marketization of the economy but without meaningful democratic reforms.

### III. *THE RULE OF LAW FACTOR*

The shift from an uninhibited political center to an inhibited one, highlighted earlier, qualifies as a landmark development in China’s post-World War II history. There is no logical

141. *See id.* at 371.

142. *See id.* at 350.

143. *See* WANG SHAOGUANG & HU ANGANG, *THE POLITICAL ECONOMY OF UNEVEN DEVELOPMENT: THE CASE OF CHINA* 21 (1999).

144. *See id.* at 28-35.

145. *See id.* at 29.

146. *See id.* at 203-04.

147. *See id.* at 206.

basis for implying otherwise. Indeed, the self-imposed principles governing the conduct of senior cadres and providing the framework for regulating behavior in the public domain may have crystallized and may have become embedded in the institutional fabric to a point whereby one may have to acknowledge that the restraint displayed and the apparent desire to reduce materially the scope for arbitrary official action may be indicative of a willingness to embrace before long democratic practices in a form and on a scale that would be inconsistent with the conclusion drawn in the previous section.

Such willingness is possibly reflected in the Party Constitution and the 1982 Constitution, both of which confirm the basic tenets of a government of laws, the supremacy of the law, and equality of all before the law.<sup>148</sup> Moreover, in 1996, the Chinese leadership adopted the new *tifa*, or official policy formulation of ruling the country in accordance with the law and establishing a socialist rule-of-law State, which was subsequently incorporated into the Constitution.<sup>149</sup> This could be viewed as merely the tip of the post-1978 legal iceberg. Given the heavy reliance on Party directives rather than the law during the Mao era, China lacked even the most fundamental legal instruments, such as a comprehensive criminal code, civil law, and contract law.<sup>150</sup> The response to the legal vacuum has been a legislative onslaught whose breadth and pace have been simply extraordinary.<sup>151</sup>

Considerable attention has also been accorded to institution-building. The Ministry of Justice has been re-established, law schools have been re-opened, and numerous legal journals have been launched.<sup>152</sup> The government has gone to some lengths to restore State legal organs and promote greater professionalization of judges, procurators, lawyers, and police officers.<sup>153</sup> Substantial resources have been channeled toward legal dissemination and consciousness-raising.<sup>154</sup> Perhaps the most compelling argument in support of the notion that China has jettisoned Mao-style "rule of man" is that the law has

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148. See PEERENBOOM, *supra* note 68, at 88-89.

149. See *id.* at 59-60.

150. See *id.* at 43-46.

151. See *id.* at 239.

152. See *id.* at 6-7.

153. See *id.* at 13-15, 350-61.

154. See *id.* at 7.

emerged as a force to be reckoned with in daily life. For example, citizens are increasingly willing to challenge the government through administrative reconsideration and litigation; moreover, they are encountering a reasonable degree of success in the process.<sup>155</sup>

Yet, while there are concrete signs that China is in the midst of a transition to a moderately diluted form of the rule of law, there is no dearth of evidence suggesting that the legal system is akin in many respects to a variant featuring rule *by* law rather than rule *of* law.<sup>156</sup> After all, the significant progress observed notwithstanding, the actual reach of the law remains fairly limited.<sup>157</sup>

Most notably, the Party's role in shaping and implementing the policy agenda is inconsistent with or not provided for in the Constitution and other legal documents.<sup>158</sup> Quite often, Party actions continue to violate laws, at times flagrantly so.<sup>159</sup> The *nomenklatura* system, which is the product of the Party's insistence on appointing or at least vetoing the appointment of key members of representative bodies and courts, undermines the authority, independence, and legitimacy of the legislature and the judiciary.<sup>160</sup> By the same token, senior Party officials are subject to disciplinary measures, if any, by Party committees rather than the courts, in blatant contravention of the fundamental rule-of-law principle that those wielding power and ordinary people should be treated equally.<sup>161</sup> Moreover, the government persists with steps impeding civil society and political dissidents are routinely denied their legal rights.<sup>162</sup>

This may well be an interim phase during which the previously uninhibited center adjusts slowly to the culture of inhibition that is gradually emerging. There are indications that China is firmly committed to "social mobilization for moder-

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155. *See id.* at 404.

156. The former refers to an instrumental conception of the legal system whereby the law is merely a tool to be employed as the State deems fit; the latter reflects the ability of the legal system to impose tangible restraints on the State and members of the ruling elite. *See id.* at 8.

157. *See id.* at 8.

158. *See id.* at 214.

159. *See id.* at 214.

160. *See id.* at 8.

161. *See id.* at 214.

162. *See id.* at 214.



nity.”<sup>163</sup> This involves Nation-building (mechanic solidarity), market-building (organic solidarity), and State-building (an advanced form of government that would replace the dominance of traditional authority underpinned by patron-client networks with legal-rational authority).<sup>164</sup> State-building inspired by the Weberian notion of legal-rational authority is not inconsistent with steady progress, even if uneven in the initial stages, toward the rule of law.<sup>165</sup>

The ultimate destination, to the extent that it can be discerned, is apparently an ambitious six-pillar structure including a neutral civil service, an autonomous judiciary, elaborate social consultation procedures (to ensure that the civil service operates within a framework of checks-and-balances rooted in the community), an independent anti-corruption body, a powerful audit unit, and extensive civil liberties (the freedoms of assembly, association, press, and speech being the most prominent).<sup>166</sup> All the components of this structure serve as the mainstay of liberal-democratic regimes, but the strong emphasis placed on social consultation—as distinct from political representation—in the China context is fairly unique from a comparative perspective. It may thus be argued that the institutional configuration envisioned will eventually display attributes of a “consultative rule of law system.”<sup>167</sup>

Interestingly, such a system is not without precedent in the history of Chinese civilization. Specifically, the country had a legalist tradition—the “Law School of Thought,” which was conceived by Guan Zhong, a Seventh Century B.C. Prime Minister of the State of Qi—exhibiting broadly similar characteristics.<sup>168</sup> It exerted considerable influence on China’s legal environment until the Liu Che period in the Han Dynasty, which saw the rise of another powerful school of thought, Confucianism, around 130 B.C., more than 2000 years ago.<sup>169</sup> The rule of law can be said to have prevailed during that stretch of five centuries,

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163. Wei Pan, *Toward a Consultative Rule of Law Regime in China*, 12 J. CONTEMP. CHINA 3, 29 (2003).

164. *See id.*

165. *See id.*

166. *See id.* at 34-38.

167. *Id.* at 33.

168. *See id.*

169. *See id.* at 34.

broadly speaking, and it was reinforced with consultative mechanisms designed to secure proper feedback from the people and their “representatives.”<sup>170</sup>

The sense of historical continuity notwithstanding, a consultative rule of law system is not about to emerge in China. It remains an institutional blueprint whose implementation may extend over decades rather than years. More importantly, the blueprint is not part of a comprehensive strategy to move in an orderly fashion toward full-fledged democracy. Quite the contrary, a consultative rule of law system is proposed as an alternative to genuinely representative government.<sup>171</sup> For Chinese constitutional architects, the establishment of legal-rational authority seems to mark, Weber-style, the completion of modernization. To state it differently, a country can be “modern” without embracing democracy.<sup>172</sup> The corollary is that the rule of law, even if it materializes sooner rather than later, will not necessarily pave the way for a regime embodying the principles of universal franchise and led by popularly elected officials.

### CONCLUSION

In the past quarter of a century, China has lowered dramatically the barriers to the flow of goods, services, and capital. It has also shifted decisively from a highly centralized economic structure to one featuring a reasonably high degree of decentralization. It remains to be seen whether the trend is irreversible and it is debatable whether the proverbial glass is half full or half empty. The prevailing view is that close integration into the global economy is inevitable, particularly following accession to the World Trade Organization, and that market forces will continue to gain momentum, emerging before long as the principal resource allocation mechanism.<sup>173</sup> Those who challenge the consensus are a distinct minority in the academic community.<sup>174</sup>

Foreign and domestic sector reform, particularly the for-

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170. *See id.*

171. *See id.*

172. *See id.* at 29.

173. *See* Karen Halverson, *China's WTO Accession: Economic, Legal, and Political Implications*, 27 B.C. INT'L & COMP. L. REV. 319, 332 (2004).

174. There is widespread agreement that China will closely integrate into the global economy. *See, e.g., id.*; *see also* Chris X. Lin, *A Quiet Revolution: An Overview of China's Judicial Reform*, 4 ASIAN-PAC. L. & POL'Y J. 180, 242 n.224 (2003).

mer, has reignited the previously stalled economic engine.<sup>175</sup> The rate of output expansion has been consistently high—indeed, often excessively so—for such a large country.<sup>176</sup> While the development strategy remains unorthodox and the policy thrust is still open to conflicting interpretations, the economy is clearly undergoing modernization, in the qualitative as well as the quantitative sense of the term. Fundamental shifts in attitudes, behavior, organizational forms, and relationship patterns can also be observed in other spheres of social activity.

It would be tempting to conclude that socio-economic transformation is so broad-based and far-reaching that the process of structural change is nearing its final phase: political liberalization that will result in the emergence of viable democratic institutions. This scenario may not be about to materialize, but it is nevertheless commonly assumed that it constitutes a realistic prospect from a medium-term perspective. We have endeavored to demonstrate that such lofty expectations, which are reflected in the academic literature and the media, cannot be readily justified. The picture does not strictly conform to the endogenous model of modernization, and the scope for redrawing it by resorting to exogenous analytical devices is rather limited.

Indeed, the interplay between economics and politics in China continues to defy conventional wisdom. Robert Dahl's notion of "polyarchy" may provide a framework for highlighting the persistence of authoritarian inertia, although of the soft variety, in an otherwise semi-modern setting. According to Dahl, a polity develops along two principal dimensions: participation and contestation.<sup>177</sup> While the former relates to the issue of "who" is included among the political classes, the latter determines "what" constitutes the essence of politics: the nature and limits of political competition.<sup>178</sup> A country may move toward polyarchy along either axis, sometimes by choice, and sometimes because of factors (external, internal, or a combination of the

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175. See Valentin A. Povarchuk, *Russian Draft Law on Special Economic Zones—A Step Forward, But Not Far Enough*, 13 PAC. RIM L. & POL'Y J. 351, 361 (2004).

176. See Jian Zhou, *National Treatment in Foreign Investment Law: A Comparative Study from a Chinese Perspective*, 10 Touro INT'L L. REV. 39, 57 (2000).

177. See ROBERT A. DAHL, POLYARCHY 33-40 (1971).

178. See *id.*

two) beyond its control.<sup>179</sup>

Yet, in a country where the ruling elite maintains a firm grip on society, it may not move at all. Currently, this appears to be the case in China, given that participation has been frozen at the level of village elections for more than a decade, and contestation, which was tentatively in evidence during the early reform period, has been nipped in the bud.<sup>180</sup> The measure of benevolence and self-restraint displayed by the power holders notwithstanding, in some crucial respects China today resembles to a greater extent Dahl's "closed hegemony" than an evolving polyarchy and it is not inappropriate to equate the absence of elite contestation with the "end-of-politics" syndrome.<sup>181</sup>

There are two key aspects to the "anti-political" orientation. One is the rejection of a pluralism of interests and viewpoints in favor of a putative and exigent unity of purpose.<sup>182</sup> Differences are denied rather than reconciled. Consequently the second is the search for an imposition of a singular form of rationality or a unitary principle onto political debate. In this new rationality, certain ideas, e.g., international best practice, are accorded strategic importance, whereas others, e.g., respecting ancestral tradition, are de-legitimized.<sup>183</sup> There is, of course, nothing particularly Chinese about this phenomenon, as many political philosophies since the Enlightenment have sought to identify the best unitary principle, rejecting the indeterminacy and instability of democratic politics in which a people makes its own choices on the basis of equality.<sup>184</sup>

Bruce Gilley posits that these two aspects of the end-of-politics syndrome—an emphasis on the unity of interests and a unitarian principle—are playing a pivotal role in shaping policy in early Twenty-First Century China in the concrete form of the doctrine of economyism and the doctrine of proceduralism. The former is a legacy of Marxist thinking, as well as possibly the Chinese tradition of this earthly thinking. It has gradually be-

179. *See id.*; *see also* Michael McFaul, *The Fourth Wave of Democracy and Dictatorship*, 54 *WORLD POL.* 212, 238-39 (2002).

180. *See* Bruce Gilley, *The "End of Politics" in Beijing*, *CHINA J.*, Jan. 2004, at 115, 116.

181. *See id.*

182. *See id.* at 124.

183. *See id.*

184. *See* Barry Hindess, *Antipolitical Motifs in Western Political Discourse*, in *THE END OF POLITICS?* 21, 21-24 (Andreas Schedler ed., 1997).

come the main element in the strategic equation regarding Taiwan, Tibet, State enterprise reform, urban unrest, and much else since the mid-1990s.<sup>185</sup> Economyism rests on the assumption that the enormous challenges of the spirit that threaten Party rule can be addressed by changing economic conditions and thereby re-adjusting spirits, that are merely derivative.<sup>186</sup> Thus, while politics is viewed as divisive and representing "partial" interests, economic development inevitably promotes harmony and represents "overall interests."<sup>187</sup>

Proceduralism reflects the belief that the residual decisions should be handled by means of processes that are insensitive to outcomes.<sup>188</sup> This is the new superior rational norm guiding China's agents of modernization. Laws and regulations are expected to function like a Hobbesian sovereign, imposing order on a system of self-seeking operators, with unavoidably beneficial consequences.<sup>189</sup> Proceduralism is a prerequisite for "technocracy"—a cohesive politico-bureaucratic elite driven by markets and scientific expertise.<sup>190</sup> Again, there is nothing particularly Chinese about this institutional pattern, which can be traced to the French revolutionary philosopher Saint-Simon, who claimed that society should be organized along industrial lines with scientists serving as spiritual leaders.<sup>191</sup>

Constitutionalism—or, more broadly speaking, the rule of law—is thus to a considerable extent a mechanism for establishing a reign of quiescence over those who would contest. It is a framework stripped of the political life that renders constitutions powerful devices for fostering deliberative agreements in open polities. In the wrong set of circumstances, it may be employed to fortify a dictatorial regime, as evidenced by the prominence of constitutionalism during the Marcos era (1972 to 1986) in the Philippines.<sup>192</sup> With the elimination of political competition that underpins effective constitutions, proceduralism may turn into a *de facto* entrenchment of the strong.<sup>193</sup> For this reason, a

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185. See Gilley, *supra* note 180, at 125.

186. See *id.*

187. See *id.*

188. See *id.*

189. See *id.*

190. See *id.*

191. See *id.*

192. See *id.* at 127.

193. See *id.*

degree of caution is warranted in interpreting quasi-democratic experiments and efforts to advance the rule of law in China, the endogenous and exogenous arguments to the contrary notwithstanding.