The Fire-Breathing Dragon and the Cute, Cuddly Panda: The Implication of China's Rise for Developing Countries, Human Rights, and Geopolitical Stability

Randall Peerenboom

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China’s rapid emergence as a major world power over the last twenty-eight years has produced shock and awe. Leaders of rich and poor countries alike envy the high growth rates. Nobel laureate economists praise China policymakers for their pragmatic approach and wise choices, with a majority predicting that China will have the largest economy in seventy-five years if not sooner. Pundits proclaim the victory of the so-called Beijing Consensus (“BC”) over the Washington Consensus (“WC”). International developing agencies admire China’s remarkable success in reducing poverty, raising literacy rates, and increasing longevity. Proponents of the new law and development movement note that China has been more successful than most countries at its income level in implementing rule of law and achieving good governance.

On one hand, China seems to be a paradigm of a successful developing country. In 2004, the World Bank hosted a conference in Shanghai attended by more than 1,200 participants from 117 countries to discuss what other countries could learn from China’s experience. On the other hand, China’s rise has been accompanied by fear—even hysteria. In the eyes of its harshest critics, China is a godless regime that brutally oppresses its people. Opposition to China is particularly intense because China is both the Soviet Union, the rising military menace, and Japan, the rising mercantilist economic power engaging in “unfair”

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* Professor of Law, UCLA School of Law. E-mail: peerenboom@law.ucla.edu.
† The Chicago Journal of International Law expresses no opinion as to the accuracy of this Article’s Chinese citations and references.
1 This article draws on arguments discussed at greater length in Randall Peerenboom, China Modernizes: Threat to the West or Model for the Rest? (Oxford, forthcoming 2006).
trade practices and threatening to “buy up America” all rolled into one. For these new post–Cold War warriors, China must be prevented from becoming so powerful as to challenge American supremacy. China’s ascendance must therefore be fought at every juncture: economically, politically, and militarily.

China is not the fire-breathing dragon portrayed by its critics. But neither is it the cute, cuddly panda as portrayed by Beijing’s spin-doctors. China’s rise will require an adjustment in the world order. The United States and Western countries will have to accept that China has its own legitimate interests, and that those interests will at times conflict with the interests of the United States and other powers.

Part I explores the implications of China’s rise for the new law and development movement, and suggests that the success of China and other East Asian states offers important lessons for other developing countries, even if not all countries will be able to, or will want to, follow the East Asian Model (“EAM”). Part II explores the implications of China’s rise for the human rights movement, focusing on the implications for civil and political rights, the right to development, global inequality, and humanitarian intervention. Part III considers whether China’s rise will lead to geopolitical instability, and what can be done to prevent this. Part IV concludes with some thoughts on United States–China relations and the recent speech by Deputy Secretary of State Robert Zoellick encouraging China to become a responsible stakeholder in the international order.3

Some cautionary caveats are in order. First, it is by no means certain that China’s growth and development will continue. Many lower income countries make some initial progress and show improvement in terms of economic growth, institutional development and good governance given their low starting points. However, once they reach the middle income level, they get bogged down. Powerful interest groups capture the reform agenda, opposing further reforms or pushing for reforms that do not benefit the general public. Economic growth slows or reverses, and the reform momentum is dissipated. Some states settle into a stable but dysfunctional holding pattern, while others sink into chaos and become failed states. There are already signs of reform fatigue and diminishing returns in China. Future progress will require the political will to press ahead with deeper economic, social, legal, and political reforms. Despite the obstacles, there is reason to be optimistic, given China’s performance to date and the exceptional success of other East Asian states.

Second, even if growth continues, it will be decades before China’s economy reaches the size of the American economy. Even then, per capita income will be much lower. While China currently has the fourth largest economy, per capita income is only about $1,300, compared to over $40,000 in the United States.\(^4\)

Third, much will depend on whether China democratizes, when it does so, and what type of democracy it becomes. While space limitations prevent a discussion of these issues, I consider how the outcomes might differ, for better or worse, if China becomes democratic.\(^5\)

Finally, assuming China continues to modernize, there will be further convergence on the institutions and practices found in other wealthy modern societies, most of which are in Europe and North America. However, capitalism, rule of law, democracy, and human rights—the hallmarks of modernity—are sufficiently contested in theory and varied in practice that the final outcome in China cannot be specified at this point, much to the chagrin of those who would press their own version of liberal democracy on China. As China negotiates modernity, and indeed post-modernity, it may very well give rise to one or more novel varieties of capitalism, rule of law, democracy, and human rights. Yet there is enough minimal determinate content to each of these four aspects to provide a teleological orientation to the process that is likely to survive into the next decades, barring extraordinary catastrophes that radically change the nature of contemporary society.

I. LAW AND DEVELOPMENT

China’s march to superpower status, along with the economic recovery in Asia after the financial crisis, has renewed interest in the EAM. The EAM—a notion which admittedly serves a useful purpose only at a high level of generalization and conceals considerable diversity when subject to closer scrutiny—includes:

(i) an emphasis on economic growth rather than civil and especially political rights during the initial stages of development, with a period of rapid economic growth occurring under authoritarian regimes;

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\(^4\) See *Global Income per Capita from World Bank Development Indicators*, available online at <http://www.finfacts.com/biz10/globalworldincomepercapita.htm> (visited May 7, 2006).

(ii) a pragmatic approach to reforms, with governments following some aspects of the WC and rejecting or modifying others; in particular, with governments adopting most of the basic macroeconomic principles of the WC for the domestic economy; rejecting or modifying the neoliberal aspects that would greatly reduce the role of the state through rapid privatization and deregulation, with the state also more active in reducing poverty and in ensuring minimal material standards to compete in a more competitive global economy; and modifying the prescribed relationship between the domestic and global economy by gradually exposing the domestic economy to international competition while offering some protection to key sectors and some support to infant industries;

(iii) as the economy grows and wealth is generated, the government invests in human capital and in institutions, including reforms to establish a legal system that meets the basic Fullerian requirements of a procedural or thin rule of law; over time, as the legal system becomes more efficient, professionalized, and autonomous, it comes to play a greater role in the economy and society more generally;

(iv) democratization in the sense of freely contested, multiple-party elections for the highest level of office is postponed until a relatively high level of wealth is attained;

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6 China has learned this lesson the hard way. While China has done reasonably well in addressing poverty, the focus on aggregate economic growth has led to rising inequality. In addition, the relatively low amount of public spending on education and health, combined with a turn toward market forces in the health sector, has increased social tensions. In recent years, to remedy these problems, the government has begun to increase public spending on education, health, and welfare services.


[a] thin theory stresses the formal or instrumental aspects of rule of law—those features that any legal system allegedly must possess to function effectively as a system of laws, regardless of whether the legal system is part of a democratic or non-democratic society, capitalist or socialist, liberal or theocratic. Although proponents of thin interpretations of rule of law define it in slightly different ways, there is considerable common ground, with many building on or modifying Lon Fuller's influential account that laws be general, public, prospective, clear, consistent, capable of being followed, stable, and enforced. In contrast to thin versions, thick or substantive conceptions begin with the basic elements of a thin concept of rule of law but then incorporate elements of political morality such as particular economic arrangements (free-market capitalism, central planning, etc.), forms of government (democratic, single party socialism, etc.), or conceptions of human rights (liberal, communitarian, "Asian values," etc.).

Peerenboom, *China's Long March* at 3 (cited in note 5).
(v) constitutionalism begins to emerge during the authoritarian period, including the development of constitutional norms and the strengthening of institutions; social organizations start to emerge and "civil society" begins to develop, albeit often a civil society with a different nature and political orientation than in Western liberal democracies, and with organizations with a political agenda subject to limitations; citizens enjoy economic liberties, rising living standards for the vast majority, and some civil and political rights, although with limitations especially on rights that involve political issues and affect the control of the regime; judicial independence remains limited, with the protection of the full range of human rights and in particular civil and political rights suffering accordingly; and

(vi) there is greater protection of civil and political rights after democratization, including rights that involve sensitive political issues, although with ongoing abuses of rights in some cases and with rights frequently given a communitarian or collectivist interpretation rather than a liberal interpretation.

This summary of the EAM very roughly describes the arc of several Asian states, albeit with countries at various levels of economic wealth and legal system development, and with political regimes ranging from democracies to semi-democracies to socialist states. South Korea and Taiwan have high levels of wealth, rule-of-law compliant legal systems, democratic government, and constitutionalism. Japan does as well, although it is a special case given its early rise economically and the post-War colonial influence of the United States on legal and political institutions. Hong Kong, Singapore, and Malaysia are also wealthy, with legal systems that fare well in terms of rule of law, but are either not democratic (Hong Kong) or are non-liberal democracies dominated by a single party (Singapore and Malaysia). Thailand, less wealthy than the others, has democratized, but has a weaker legal system and, under Prime Minister Thaksin, has adopted policies that emphasize growth and social order rather than civil and political liberties. China and Vietnam are at an earlier stage. Although China is a lower-middle income country and Vietnam is a low-income country, both have legal systems that outperform the average in their income class but are still

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8 Thaksin at one point rejected the EAM because of the low rates of growth in the more mature economies and the overdependence on cheap labor to fuel growth. However, he later recanted, claiming that his government was not abandoning the EAM but trying to build on and improve it. Thaksinomics involves running the country like a company, emphasizing equitable growth, promoting competition through marketization while protecting and directing credit to certain domestic industries, depressing the exchange rate to promote exports, promoting regional trade, and bringing the informal economy into the formal sector. See Pasuk Phongpaichit and Chris Baker, *Thaksin: The Business of Politics in Thailand* 99–133 (NIAS 2004).
weaker than the rest. They remain effectively single-party socialist states, with varying degrees and areas of political openness.

There are also examples of less successful paths in Asia (and elsewhere). Some involve countries that democratized at lower levels of wealth: Indonesia, India, the Philippines, and Cambodia. Others involve authoritarian systems that failed to invest in human capital and institutions: North Korea, Laos, and Myanmar. The latter tend to have the weakest legal systems and are mired in poverty, with all of the human suffering that it entails. When authoritarianism fails, it fails badly.

A. THE EAM, THE WC, AND THE BC

The experiences of Asian countries shed light on three of the main points of contention in the debates over neoliberalism, the Washington Consensus, and the Beijing Consensus and the relationship between them: whether the WC requires neoliberalism's minimalist state; whether the principles of the WC are to be applied without adaptation in all countries; and whether the BC entails a wholesale rejection of the WC.

As for the first issue, according to John Williamson, the economist who first articulated the WC, the WC was never intended to minimize the role of the state. Thus, WC proponents today need not and should not subscribe to populist interpretations that equate the WC with neoliberalism, market fundamentalism, Reaganomics, and Thatcherism—in short, the mentality of "let's bash the state, the markets will resolve everything." This may be an accurate reflection of Williamson's thinking at the time or an attempt to rewrite history. In any event, the view that states and the international community need to play a bigger role in alleviating poverty than suggested by neoliberals is now gaining ground. This is reflected in the success of East Asian states, the acceptance by the IMF and other international financial institutions of the need for a greater role for the state in guiding the economy and ensuring equitable growth.

9 Laos and Myanmar had average growth rates over 6 percent between 1991 and 2001, and government officials may be beginning to realize the virtues of the EAM. Even North Korea shows signs of change.

10 The BC, WC, and related terms such as neoliberalism and market fundamentalism mean different things to different people, reflecting a lack of consensus even as to content, much less as to the superiority of any particular approach. In addition to a pragmatic approach to reforms and support for a larger role for the state in guiding the economy and ensuring equitable growth, the BC has been used to refer to market reforms without democracy, an emphasis on self-determination to prevent powerful international actors from unduly influencing China's development choices, and more problematically, a repudiation of the WC. See, for example, Joshua Cooper Ramo, *The Beijing Consensus* 4–6, 11–13 (Foreign Policy Centre 2004).

to consider the impact of their prescriptions on the least advantaged in society, and the renewed commitment by developed countries to address global injustice and the increasing gap between rich and poor countries.

The second issue is whether the principles of the WC should be applied uniformly in all countries. The various crises in Argentina, Mexico, Brazil, Russia, Indonesia, Thailand, and other countries that followed the WC most faithfully, in contrast to the success of East Asian countries that adopted a more pragmatic approach, have tilted the scales decidedly in favor of the view that one size does not fit all. To be sure, diehard supporters of neoliberalism and the WC continue to claim that these countries failed largely because they deviated from neoliberal prescriptions and WC policies. Moreover, revisionists, including Williamson himself, claim that the basic approach is correct but may need to be modified somewhat in certain cases. This concession, however, narrows the gap between the supporters of the WC and the EAM, though much depends on the details of what may be modified and when.

Third, and relatedly, Beijing and other successful East Asian states have followed many of the basic WC principles in whole or in part. Thus, we need to avoid drawing too sharp a contrast between the BC and the WC. There is some danger that in looking to China and other successful East Asian countries, developing countries may draw the wrong conclusion. Having shifted too far to the right in the past in adopting the neoliberal aspects of the WC, they may now shift too far to the left, rejecting basic market principles, becoming overly protective of domestic companies, and giving in to populist pressures for more services and benefits than the state’s limited resources will allow. This risk seems highest in Latin American countries but can also be found in India, the Philippines, and Indonesia, which have gone the furthest in recognizing the justiciability of economic rights and in adopting the capabilities approach championed by Amartya Sen and others.12

B. RULE OF LAW AND GOOD GOVERNANCE NECESSARY FOR SUSTAINED ECONOMIC GROWTH

Five East Asian countries or jurisdictions rank in the top quartile on the World Bank’s rule of law index: Singapore, Japan, Hong Kong, Taiwan, and

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South Korea. This is an astonishing achievement given the well-documented failures of the earlier law and development movement and its more recent reincarnation under the banner of rule of law and good governance. Apart from North American and Western European countries, Australia, and Israel, the only other countries in the top quartile are Chile and French Guiana from Latin America, Slovenia as the lone (non-)representative from Eastern Europe, and a handful of small island states and oil-rich Arab countries.

The seemingly random countries in this odd grouping have one thing in common—wealth. All of the countries in the top quartile of the World Bank rule of law index, including the East Asian countries, are high or upper-middle income countries. This is consistent with the general empirical evidence that rule of law and economic development are closely related ($r = 0.82, p < 0.01$) and tend to be mutually reinforcing. The relationship between GDP and rule of law

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15 These include Antigua and Barbuda, Barbados, the Bahamas, Bermuda, the Cayman Islands, Malta, Martinique, Mauritius, Puerto Rico, and Samoa, in addition to Oman, Qatar, Bahrain, Kuwait, and the United Arab Emirates. Several of the island states rely heavily on tourism and the provision of financial services to companies looking for tax havens for economic development. Most have populations between fifty thousand and five hundred thousand. See World Bank, *Governance & Anti-Corruption* (cited in note 13).

16 $r$ is a measure of the strength of association between two variables. It ranges from 0 (no relationship) to 1 (perfect linear relationship) or −1 (perfect negative linear relationship). $p$ represents the probability that the relationship (in this case measured by $r$) is a random outcome due to bad data. A small $p$-value (less than 0.05) is an indicator that the measured relationship is not due to chance and hence considered statistically significant.

17 Based on time series data, a study has found that the causal relationship between institutions and economic growth runs in both directions, although the impact of greater growth on institutional development is stronger than the impact of institutions on growth. Alberto Chong and César Calderón, *Causality and Feedback between Institutional Measures and Economic Growth*, 12 Econ & Pol 69 (2000). See also Roberto Rigobon and Dani Rodrik, *Rule of Law, Democracy, Openness, and Income—Estimating the Interrelationships*, 13 Econ Transition 533 (2005). A World Bank study agrees with the finding that wealth matters to some extent but concludes that the causal impact of income on
is actually stronger in the Asian region \((r = 0.91)\) than for countries overall \((r = 0.82)\).

Some commentators have argued that China has enjoyed remarkable economic growth in the last several decades, apparently without the benefit of “the rule of law” and clear and enforceable property rights.\(^8\) China’s success therefore calls into question the wisdom of spending billions of dollars on promoting rule of law and good governance modeled on the legal systems and political institutions found in Europe and North America. Accusing the apostles of the revamped law and development movement of mythmaking, New York University Law Professor Frank Upham claims:

[This new rule of law orthodoxy linking formalist legal regimes and economic development ignores the empirical evidence and is ultimately counterproductive. Not only does the formalist rule of law as advocated by the World Bank and other donors not exist in the developed world, but attempting to transplant a common template of institutions and legal rules into developing countries without attention to indigenous contexts harms preexisting mechanisms for dealing with issues such as property ownership and conflict resolution.]\(^9\)

Yet the experience of China and other Asian countries suggests that rule of law is essential for sustained economic growth. Even in China, the legal system has improved significantly in the last twenty-five years, particularly in the commercial area, to the point where China’s legal system now outperforms the average in its income class on the World Bank’s rule of law index.\(^20\)

The importance of rule of law to sustained growth does not mean that poor countries need to import wholesale the political and legal institutions found in rich states—they generally cannot and should not. Rather, they must take advantage of local resources to develop institutions that respond to local needs.

\(^{18}\) See, for example, Donald C. Clarke, *Economic Development and the Rights Hypothesis: The China Problem*, 51 Am J Comp L 89, 91 (2003). For a discussion of the debates about the role of law as opposed to other factors in China’s development, see Peerenboom, *China’s Long March* at 450–512 (cited in note 5).


Nor does the importance attached to rule of law assume that any legal system actually plays the role or lives up to the ideals sometimes suggested in civic textbooks. Legal systems are complex. There is always considerably more discretion, as well there should be, than some of the interpretations of rule of law as a formalistic rule of rules would suggest. But as anyone knows who attempts to establish a business, or who is arrested, or who wants to challenge the government's seizure of his property in Bangladesh, China, or the United States, rule of law matters, and there is a big difference in how well legal systems meet the generally accepted principles of a thin rule of law.

C. DEMOCRATIZATION: GROWTH BEFORE FREEDOM

There are two competing versions of modernization theory. The first emphasizes economic development as the motor for other reforms; the second puts freedom and democracy ahead of economic development. The policy implications of the two approaches are different. In light of the difficulties sustaining economic growth and the long timeframes involved in reaching a high level of wealth, the economics-first approach tends to be more patient and more tolerant of authoritarian regimes, at least the ones that are able to deliver the goods. The freedom-first approach is less patient and less willing to tolerate non-democratic regimes, albeit subject to realpolitik compromises. The Bush Administration's messianic promotion of democracy, for instance, entails applying political pressure on governments to democratize. The Administration rewards those that do, and attaches conditions to aid and imposes economic sanctions on those that do not, despite the disingenuous claims that "America will not impose our own style of government on the unwilling." At the extreme, this approach supports humanitarian intervention and even regime change, as in Iraq (although admittedly the desire to promote democracy seemed to become a priority only after it was clear there were no weapons of mass destruction and no linkage between Iraq and al Qaeda). To many citizens in developing countries, and even to many Western liberals, this approach smacks

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21 Bush shared his visions in his second inaugural address:

America's vital interests and our deepest beliefs are now one. From the day of our founding, we have proclaimed that every man and woman on this Earth has rights, and dignity and matchless value because they bear the image of the maker of heaven and Earth. Across the generations, we have proclaimed the imperative of self-government, because no one is fit to be a master, and no one deserves to be a slave. Advancing these ideals is the mission that created our nation. It is the honorable achievement of our fathers. Now it is the urgent requirement of our nation's security and the calling of our time. So it is the policy of the United States to seek and support the growth of democratic movements and institutions in every nation and culture, with the ultimate goal of ending tyranny in our world.

of imperialism. While not opposed to the use of coercion to pursue America’s interests, neo-conservatives find this normatively driven agenda excessively idealistic and at odds with the realism that has been the cornerstone of American foreign policy.

The second approach also tends to assume that individual freedom and neoliberal economic policies are adequate, with little need for the state. Although there is no necessary connection between the freedom-first approach and a small state, the assumption that the two are correlated reflects, or at least reflected, the dominant thinking among some of the leading Western economic powers. In contrast, the economics-first approach tends to favor a larger role for the state in setting economic policies, dealing with market failures, and ensuring equitable growth, though again there is no necessary connection.

The experiences of Asian states tend to support the approach that emphasizes growth as the motor for reforms and to disconfirm the freedom and democracy first approach. Those countries that have attempted to democratize at lower levels have failed in the past, oftentimes reverting to authoritarianism. Indonesia tried democracy just after independence from the Dutch between 1950 and 1957. The experiment ended when Sukarno declared martial law. Thailand went through numerous cycles of democratic elections followed by military-led coups; there have been seventeen coups attempted since 1932. South Korea held elections in the 1960s and early 1970s before returning to authoritarian rule. The less-than-successful experiments with democracy in the Philippines since 1935 led to the declaration of martial law by Marcos in 1972. In recent times, states that have attempted elections at low levels of wealth and with weak institutions, such as the Philippines, Indonesia, India, Cambodia, and now Timor-Leste, continue to limp along with low levels of economic development, pressing social order problems, and massive discontent with their corresponding political systems.

The experience of Asian countries in this regard is consistent with the experience of many countries elsewhere, as well as empirical studies that show that democracies are unstable at relatively low levels of wealth and vulnerable to economic downturns. Democracies have a life expectancy of just eight years when the country’s per capita income is less than $1,000. Of the twelve

22 Robert Pinkney, Democracy in the Third World 65 (Lynne Rienner 2003) (noting the remarkable fact that “almost all third world countries have had at least nominally pluralist political systems at some time in their history, yet the majority did not (or could not) build on these to establish durable forms of democracy”).


democratizations established prior to 1950 with a per capita income below $2,000, eight failed. As some commentators have noted, “it is still striking how fragile poor democracies are. In countries with incomes under $2,000, of the 116 years during which declines in incomes occurred, twelve democracies fell the following year.” The longer the economic decline, the more likely the regime is to fail.

Although wealth matters, this does not mean there is a particular point at which countries necessarily become democratic. There have been and still are rich authoritarian or semi-democratic states in Asia and elsewhere. Obviously, many countries have become democratic at very low levels of wealth. And while per capita income is the best predictor of the survivability of democracies, a few countries have managed to sustain democracy against the odds, including India, Costa Rica, Mauritius, Botswana, Jamaica, Trinidad, and Papua New Guinea. Other than India, these are all small countries with populations of less than five million and several below one million. With some exceptions, these countries tend to be relatively wealthy by developing country standards, to have distributed wealth reasonably equitably, and to have invested in human capital and effective institutions.

25 Id at 111.

26 Countries with income over $4,000 per capita (PPP) that democratize are not likely to revert to authoritarianism, and no country with an income over $6,055 has ever reverted. Id at 78-127.

27 Democratization in China is likely to be affected by various factors including the support or resistance within the Party; the attitudes of non-Party elites; the views of the citizenry; the level of economic development; the development and orientation of civil society; the political culture; institutional development, including the extent to which the legal system is able to support the requirements of a democratic order; and exogenous events, some of them foreseeable, such as international pressures arising from globalization in the economic, cultural, legal, and political spheres, and some of them unforeseen, including perhaps wars and new financial crises. I have discussed the foreseeable factors elsewhere, concluding that China is not likely to become democratic in the near future. I have also argued, however, that while democratization is neither feasible nor desirable at present, China is likely to democratize in the long run for at least three reasons: to overcome what is likely to become a growing legitimacy deficit, to address accountability problems, and to ameliorate intensifying social cleavages. Peerenboom, China’s Long March (cited in note 5). For a discussion of the various paths to democracy and the likely impact of democratizing or not democratizing on a range of issues, see Bachman, China’s Democratization (cited in note 5), who believes gradual democratization more likely, and Gilley, who believes that CCP rule will end with a bang rather than a whimper. Gilley, China’s Democratic Future at 191 (cited in note 5) presents a much more optimistic picture regarding the benefits of democratization, while acknowledging the possibility of chaos and the probability of “much violence and many deaths.” He suggests that democracy will not fail in China, as it has in so many other developing countries, although the transition to democracy “will likely be ugly, very ugly at first.” Id at 153. His optimism seems to be based in large part on the view that most third-wave transitions have led to successful consolidation—a view dramatically at odds with the empirical record, and the views of Diamond, Pinkney, and other scholars of democratic transitions, as discussed previously. Gilley asserts that limited violence may be necessary and morally acceptable for a greater justice,
D. Restrictions on Civil and Political Rights

Justifications for restrictions on civil and political rights in the name of social stability and economic growth remain controversial. To be sure, successful Asian states allowed certain sorts of freedoms during the authoritarian phase of rapid economic growth, including some civil and political rights. Citizens were allowed for the most part to associate with whom they chose, to speak their minds, and to engage in religious practices, provided that in so doing they did not challenge the state or threaten to disrupt social order. They were also able to participate in politics in various ways, including standing for office in local elections. But they were not given the right to stand for national elections or to elect their leaders. In the few instances where they were given this right, the outcomes of the elections were highly controlled. In short, citizens of successful Asian states enjoyed considerable freedoms, including some political freedom, but only in the context of a non-democratic or non-liberal system.

The situation in China today is similar. Chinese citizens enjoy considerably more freedom than in the past. At the same time, the government continues to impose—in some cases ruthlessly and with little regard for legal niceties or international opinion—severe limitations on civil and political freedoms when the exercise of such rights is deemed to threaten the regime and social stability. Accordingly, China receives a very low score on civil and political rights—ranking in the lowest 10 percent of all countries on the World Bank’s voice and accountability index. China scores poorly relative to many countries in Asia and elsewhere, and relative to its level of economic development.  

Whether the future is likely to see more repression or greater protection of civil and political rights depends in part on the outcome of deeply contested debates about how to respond to the increasing social tensions, the sharp rise in demonstrations, and the specter of a popular uprising such as the color and that the world should be willing to pay the cost of “some degree” of chaos in China. He also suggests Chinese citizens would find the “great deal of bloodshed” and the political, social, and economic disruption worth it, just as people in other countries allegedly have. However, the many polls showing widespread disenchantment of citizens in developing countries with democracy and the willingness to sacrifice elections and civil liberties for economic growth suggest that many people may not find the bloodshed and social disorder worth it. This is all the more likely to be the case for Chinese citizens given the higher value placed on social order, the memory of violent chaos and political instability for much of the last two hundred years, and the dire consequences for social, economic, and political disruption on the hundreds of millions living below or near the poverty line.

28 See World Bank, Governance & Anti-Corruption (cited in note 13).
revolutions in the former Soviet republics.³⁹ Three dominant competing perspectives have emerged.

One extreme emphasizes repression of dissent. Tight limits are imposed on social organizations and the exercise of civil and political rights that threaten political stability. This is combined with an ideological battle to win the hearts and minds of Chinese citizens, government officials, and Party members by revamping socialism and explaining the reasonableness of the current reform agenda.

At the other end of the spectrum are those who argue that rapid and broad-ranging reforms are necessary to prevent the reform process from stalling, to meet the rising demands from the citizenry, and to avoid a political crisis. Rather than tightening restrictions on civil society and the exercise of civil and political rights, this theory argues that the government should relax restraints.

A third, more moderate perspective acknowledges that China is confronting a variety of serious challenges to social stability, as is typical for middle-income countries. Hence, there is a need to maintain restrictions on civil and political rights. At the same time, however, there is an equally pressing need to continue to invest in human capital and institutions, to pay more attention to social justice and the wealth effects of economic reforms, and to gradually expand civil and political liberties. In short, stick to the EAM. Repression alone does not provide a long-term solution. It simply increases the likelihood of some sort of political crisis or that China will end up like other stable but dysfunctional middle-income countries. At the moment, the moderate approach appears dominant. Despite the tightening in some areas, reforms have continued in other areas.

The moderate approach inevitably will give rise to criticisms from both those who think the government is being too repressive and slow to implement reforms, and from those who take the opposite view. Almost everyone will object to some specific policies or the results in particular cases. Maintaining a balance will be difficult, and the short-term is likely to be rocky. However, Bruce Bueno de Mesquita and George Downs have shown that authoritarian regimes are able to achieve economic growth and postpone democracy by providing standard public goods—such as public transport, public health, and primary and secondary education—while controlling public goods necessary for political coordination, such as civil and political rights and a free press.³⁰ An authoritarian

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³⁹ Color revolutions are mainly nonviolent movements that first developed in post-Communist eastern European states. Nevertheless, the government in China fears popular uprisings that might lead to mass demonstrations calling for political change.

³⁰ A study found that restricting coordination goods does not prevent economic growth, except at the highest levels of per capita income. The authors recommend attaching conditions to
regime that ensures economic growth and restricts coordination goods has a substantially higher chance of survival, whereas allowing freedom of the press and civil liberties decreases the regime’s chance of survival by 15 to 20 percent.\textsuperscript{31} The experiences of Asian countries suggest that, at least up to a point, this strategy produces better results than democratization at low levels of wealth. Of course, in some cases authoritarian regimes may impose too many restrictions or unjustifiably delay the transition to democracy.

Democracy proponents claim that a democratic China could implement similar reforms while maintaining political and social stability. Policies such as investing in human capital and institutions, attending to inequalities arising from economic globalization and the transition to free markets, and forcing through difficult economic and legal reforms could be achieved without repression. Unless China democratizes in the near future, we will never know if they are right. However, the empirical record of other countries that have democratized at lower levels of wealth, including countries in Asia, suggests that the more likely result would fall considerably short of the noble aspirations of democracy advocates. Democracy advocates might attribute the empirical shortcomings in other countries to a stunted form of electoral democracy; what is needed, they argue, is a more genuinely democratic system, a substantive or progressive democracy that gives voice to and addresses the concerns of the poor and marginalized. However, substantive democracy exists as an ideal rather than a reality, especially in developing countries that lack the resources to provide robust welfare benefits. These countries lack the ability to provide services to individuals that are necessary for maximizing individual capabilities. Chinese leaders would have to be considerably less risk averse, and considerably less pragmatic, than they are now to take the chance on democracy of any kind at this stage.

E. CHINA AS A MODEL FOR OTHERS?

There are aspects of China’s experience and the experiences of East Asian states in general that may be useful for other countries. For a variety of practical and normative reasons, China’s developmental path does not provide a detailed

\textsuperscript{31} Id at 84.
blueprint that other developing countries can easily follow. Although the general economic approach appears sound, there are still doubts about whether there is an EAM, and if so, whether the model contributed to or impeded economic growth. Moreover, the model is stated at a level of abstractness that still requires policymakers to make wise choices in light of the particular circumstances. East Asian countries have diverged on specific policy issues, and other countries that follow the model will as well.

Even assuming the soundness of the EAM, other countries may not be able to or may not want to follow it. Unlike China and many other East Asian states, most developing states that have democratized will not be able to restrict civil and political rights in the name of social stability and economic growth. Citizens of other developing countries may also object that the trade off is unnecessary in their case or not worth it. In addition, other countries may not have the political or economic power that China has to resist external pressures to open the domestic economy to foreign competition. China is certainly different than many developing countries in terms of size, political power, the nature of its political system, and the degree to which it can control its own economic destiny.

More fundamentally, each country faces unique challenges and opportunities. Along the way, particular choices are made. Some institutions gain power, some lose power; some segments of society are improved as a result of reforms, while others are made worse off. Accordingly, the story of modernization or law and development in any given country is inevitably a story of politics—and largely one of local politics. Thus, it is not likely that any single model will apply everywhere. At a minimum, the model must be adapted to local conditions. This pragmatism has been a key to the East Asian success. Nevertheless, despite the differences among successful Asian countries and between Asian countries and other countries, mutual learning is still possible.

F. THE NEED FOR FURTHER RESEARCH OF MIDDLE-INCOME COUNTRIES

China is entering the stage of the reform process where many middle income countries have lost their way. China’s rapid progress in improving its legal system and good governance appears to be slowing, if not reversing. The country’s rule of law and good governance rankings were all lower in 2004 than they were in 1998. The lower rankings may be a statistical anomaly or they may
be due to subjective biases, but there are signs of reform fatigue and diminishing returns.\textsuperscript{32}

\textbf{Figure 1: PRC Good Governance Indicators 1998 and 2004}\textsuperscript{33}

\begin{figure}
\centering
\includegraphics[width=\textwidth]{figure1.png}
\caption{Comparison between 2004, 1998 (top-bottom order) Country's Percentile Rank (0-100)}
\end{figure}

\textsuperscript{32} Kaufmann, et al, concede the difficulties of assessing trends in a particular country indicator given the large margins of error. The decreases may be attributable to the addition of new data sets and large margins of error (standard deviation of 0.12 for rule of law), with the latter the more important factor. After new data sets were added, China's scores from earlier years were lower than previously reported. For example, China's 2002 rule of law ranking is now listed in the 48.5 percentile rather than the 51.5 percentile previously given when the data came out in 2003. See Kaufmann, Kraay, and Mastruzzi, \textit{Governance Matters III} at Table 4 (cited in note 20); Kaufmann, Kraay, and Mastruzzi, \textit{Governance Matters IV} (cited in note 17). Other indicators for 2002 are anywhere from 2 to 4.5 percentage points lower now than when reported in 2003.

The World Bank index aggregates results from several other data sets that rely on subjective judgments by business people and others familiar with China. Thus, there is also the possibility that subjective impressions are out of line with objective circumstances, particularly when it comes to a technical area such as legal reforms. Non-specialists in particular might have been disappointed that China's accession to the WTO did not create a miraculous overnight change to a rule of law compliant legal system.

Moreover, although a single aggregate measure is useful in providing a very rough sense of the quality of a country's legal system in relation to the legal systems of other countries, it may obscure as much as it reveals. China is a huge country. Different areas of law are progressing at different rates, with the commercial law area among the strongest and criminal law among the weakest. The quality of the judiciary varies by the level of the court, the region, the division within the court, and the type of case. Problems such as judicial competence, local protectionism, and corruption mainly affect basic level courts.


\textsuperscript{33} Kaufmann, Kraay, and Mastruzzi, \textit{Governance Matters IV} (cited in note 17).
China is not unusual in encountering obstacles and opposition to the implementation of rule of law and good governance. In 2005, the authors of the World Bank’s ongoing study of good governance cautiously concluded that there is no evidence of “any significant improvement in governance worldwide, and if anything the evidence is suggestive of a deterioration, at the very least in key dimensions such as regulatory quality, rule of law, and control of corruption.”

Unfortunately, the law and development movement has yet to focus on the particular issues confronting middle-income countries and how to overcome these problems. Apart from wealth, what, if anything, do successful countries share? Are there any discernible patterns among the successful middle-income countries with respect to politics, legal systems, cultural characteristics, institutions, colonial history, population size, or ethnic diversity? What distinguishes the successful countries from the less successful countries in the region? What are the obstacles (political, legal, economic, cultural, institutional) to establishing a legal system that would compare favorably with those in the top quartile? Even assuming wealth and rule of law are closely related, what are the implications for policymakers? The empirical studies do not shed enough light on how to achieve economic development or the particular institutional arrangements necessary for a rule of law. Nor do they shed much light on the path or sequencing of reforms.

II. CHINA AND THE HUMAN RIGHTS MOVEMENT

Critics fear that China’s emergence as a world power threatens the progress made over the last fifty years on human rights. In this view, China is likely to take advantage of its growing economic and geopolitical influence to defend and advocate, even in the face of Western opposition, rights policies and a normative vision of the world at odds with current rights policies based on secular liberalism. This is already beginning to happen, they contend, most notably in the heavily politicized debates over “Asian values” and in China’s attempts to influence the policies and restructuring of the UN’s Human Rights Commission. As a result, critics accuse China of adopting a strategy of divide and conquer,

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34 Id at 14. The World Bank’s country policy and institutional assessment (“CPIA”) ratings measure economic management, structural policies, public sector management and institutions, and policies for social inclusion/equity. The overall CPIA ratings of developing countries improved slightly from 1999 to 2004. However, progress on governance and institutional reforms, as measured by public sector management and institutions, while still marginally positive overall, was the weakest of all indicators. Moreover, there are significant regional differences and differences among countries within regions. Sub-Saharan Africa in particular lags behind in simplifying procedures to start a business, securing property rights, strengthening contract enforcement, establishing rule of law, and controlling corruption. World Bank, Global Monitoring Report—Millennium Development Goals: From Consensus to Momentum 6 (2005).
where the concept of universality is sliced up “little by little, region by region, to the point where there are few teeth left in the UN human rights monitoring and implementation mechanisms.”

We are, in short, heading for a “clash of civilizations.”

It is possible that China, whether democratic or not, might adopt a more aggressive human rights policy based on differing ideologies and competing conceptions and interpretations of rights as part of a cultural war with the dominant United States, and a larger struggle for the hearts and minds of the international community. Yet this is unlikely. China is more likely to focus on bottom-line issues such as trade and national security. A rising China is not likely to feel that the investment in academic debates about moral theory is worthwhile. Although China has criticized the human rights movement for being biased toward liberalism and has begun to strike back at the United States by issuing its own critical report of human rights in the United States, it has done so mainly as a defensive measure, on the theory that the best defense is a good offense. It did not, for example, rush to join Singapore and Malaysia at the forefront of the debates over Asian values, even though many of its positions were compatible with the Asian values platform. Rather, China has sought to portray itself as a responsible member of the international community through increased participation in the international human rights regime. If anything, China is generally perceived as being surprisingly passive in not formulating new proposals or participating actively in international organizations except with respect to Taiwan and issues that bear directly on its own national security.

As a strategic matter, the government is not likely to launch a frontal assault on liberal democracy or seek to persuade others that liberalism is morally inferior to communitarianism or some other view. There is strong support for liberal democracy among the elite in international organizations, despite the poor empirical record of democracies and the many existing critiques of liberalism from both Western and Asian scholars. People tend to stick with what they believe—which is generally what they grew up believing. Philosophical

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37 See, for example, Alastair Iain Johnston, American Scholarship on China’s Participation in International Institutions (Chinese), 8 World Econ & Pol (Shijie Jingji yu Zhengzhi) 48 (2001), available online at <http://www.people.fas.harvard.edu/~ejohnston/WEWP2.pdf> (Chinese) (visited May 7, 2006).
38 Ironically, many Asian critics of liberal democracy were trained in elite Western universities, where they were exposed to the arguments and discourses of orientalism, post-modernism and post-colonialism, and to Western critics of democracy and liberalism.
arguments are unlikely to persuade most people to change their fundamental moral beliefs. Indeed, firmly held moral views are stubbornly impervious to contrary evidence regarding the actual consequences of such views or arguments in support of opposing viewpoints.

Even if China's government leaders were inclined to openly question the merits of liberal democracy, China lacks a coherent, normatively attractive positive ideology to export as a substitute. Attempts to advocate Asian values, New Confucianism, and communitarian alternatives to liberalism have suffered from the lack of a systematic, coherent theory. In contrast, despite significant points of contention among liberals, there is a general sense that liberalism has some proper intellectual foundations—although liberalism also benefits from a halo effect, with people assuming that liberalism must be desirable because the richest and most successful countries are liberal democracies. Whether in the West or in Asia, communitarianism always seems less reputable and less convincing because it lacks a systematic theoretical exposition. It seems more like a marginal critique of liberalism than a credible, full-fledged alternative able to stand on its own. We are still waiting for an Asian (Chinese, Korean, Thai, Buddhist, Confucian, or Islamic) Rawls to synthesize values, beliefs, practices, and institutions into a normatively attractive systematic alternative to liberalism that is compatible with modernity and yet sufficiently distinctive to be more than just a variant of liberalism. At present, Chinese citizens are much too divided about the future of China to produce such a consensus. It will be decades before China reaches a point of relative social, economic, and political stability to produce the kind of thick consensus needed to articulate a credible alternative, and before that alternative can benefit from its own halo effect. By that time, China is likely to have democratized and become more like Japan, South Korea, and Taiwan on contested rights issues. If so, any normatively attractive alternative to liberalism will contain enough common ground with liberalism to avoid a "clash of civilizations." The debates will be more similar to the debates between liberals and communitarians or conservatives than to the conflict between communism and capitalism or Islamic fundamentalist theocracy and liberal democracy.

For the near future then, China is likely to keep a low profile while it consolidates power—so long as it is allowed to. China first articulated its rights policy when forced to respond to the criticisms of the international community in the wake of Tiananmen. The repeated attempts in Geneva to censure China for human right violations have resulted in a refinement of China's critique of the human rights regime, more aggressive counter-attacks on other countries, more adept manipulations of procedural mechanisms in the UN human rights system, use of growing economic clout to lobby other countries for support, and investment of more resources to influence the operation and restructuring of human rights bodies. Similarly, China's response to increased pressure from the
Bush administration and the international community to democratize was to issue its own white paper on democracy. Like the earlier human rights white paper, the democracy white paper emphasizes that political reforms must reflect a country’s particular circumstances, including the level of economic development, institutional capacity, and cultural traditions. The report was forthcoming in acknowledging shortcomings and the need for deeper reforms, and described the many obstacles and challenges China faces as a developing country. The paper also responds to the domestic audience pressing for rapid political reforms, both by pointing out that reforms are taking place and by warning activists not to push too hard for immediate, dramatic change.

The next major challenge for China is how to respond to the increasing international and domestic pressure to ratify the International Covenant on Civil and Political Rights (“ICCPR”), which it signed in 1998. On the one hand, China will continue to be criticized unless it ratifies the treaty. On the other hand, ratification will inevitably lead to greater confrontation with the international rights community by forcing China to defend more explicitly its interpretation of a series of contested rights issues. Some reform-minded Chinese scholars have argued that China could ratify the ICCPR without attaching many reservations or statements, on the basis that China’s constitution and other laws already provide for virtually all of the rights set out in the ICCPR. Besides deliberately downplaying the gap between formal laws and actual practice, this view ignores the politics of interpretation. The rights in the ICCPR are stated at a fairly high level of abstraction, and thus are subject to a wide range of interpretation. The ICCPR Human Rights Committee (“Committee”) is charged with interpreting the ICCPR. The Committee’s interpretations tend to be decidedly more liberal than the interpretation of the Chinese government. Although the Committee’s interpretations are non-binding, they do carry weight in the international community, and can and will be used to “shame” China. Were China to ratify the ICCPR, it would most likely do so with either a blanket reservation that the ICCPR has no domestic effect, as the United States has done, or with a series of reservations and statements that greatly limit the domestic impact of the treaty. Either approach is fraught with risk—the United States has been widely criticized for its reservations, and China is sure to be subject to considerably greater criticism.

To be sure, Chinese citizens take tremendous pride in Chinese culture and civilization. Once China has consolidated power, Chinese citizens, led perhaps by charismatic nationalists demanding that China stand up to the United States and its allies, might push their government to champion a rights policy that reflects “Chinese values.” Of course, not all 1.4 billion Chinese share the same values, and people’s values will change as China becomes wealthier and more urbanized. Nevertheless, fundamental beliefs tend to change slowly. If so, then China would most likely promote human rights policies that are less liberal and more collectivist or communitarian, that offer states a wider margin of appreciation on contested issues, and that reject a neo-Kantian deontic justification for rights in favor of a more pragmatic approach. Ironically, pragmatic Chinese are more likely to be genuinely tolerant of different lifeforms than allegedly tolerant liberals.

Such a human rights policy would challenge the alleged universal consensus on many specific human rights issues, or at least the consensus among much of the cosmopolitan elite in economically advanced Western liberal democracies. But whereas liberal critics see such policies as a dangerous threat to the legitimacy of human rights, supporters see China’s position as a necessary corrective to the hegemony of liberalism and the neo-imperialistic tendencies of the Western-centric human rights movement. Thus, neo-authoritarians, New Confucians, communitarians, and even some members of the new left hope that China may one day provide a viable normative alternative to the formal democracy and liberalism that have failed to resolve the very pressing issues of social inequality and human well-being for so many people in rich and poor countries alike.

A. LEADER OF DEVELOPING STATES: THE RIGHT TO DEVELOPMENT AND GLOBAL JUSTICE

Developing states see China as their natural ally in the struggle for global justice. Given China’s geopolitical importance and rising economic clout, China is expected to play a leading role in the struggle to persuade wealthy countries to take the right to development seriously. China’s support is also viewed as pivotal in the fight for fairer trade policies that do not result in increased impoverishment of developing countries while the rich get richer. Poorer countries want China to take a strong stand on issues such as access to patented drugs, protection of cultural artifacts and local know-how not recognized under the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights.
restrictions on the use of antidumping and safeguard mechanisms to limit imports of textiles and other products from developing countries, increased aid, and perhaps most importantly, the elimination of agricultural subsidies and tariffs in developed countries. China, for its part, has been cautious about assuming the role of representative of developing countries, doing so on a case-by-case basis when the particular policy position favorable to developing countries is consistent with China’s general national interests.

Nevertheless, China’s human rights policies will likely emphasize the need to ensure the material well-being of all humans and to provide them with the tools and conditions to succeed, in keeping with the principles of the EAM. There is at least some hope that an increasingly powerful China, even after it becomes a benefactor rather than a beneficiary, will continue to pressure the international community to take seriously the right to development, to address global inequality and to ensure that the poorest countries have adequate resources to develop and maintain political and social stability. China has, for example, canceled over one billion dollars in debt from African countries. It has also emphasized the need to provide preferential treatment to Cambodia, Laos, Myanmar and Vietnam in the framework agreement to establish a free trade zone with the Association of Southeast Asian Nations (“ASEAN”). And it has made a number of pledges to the UN to assist developing countries, including eliminating all tariffs on certain products, offering over ten billion dollars in concessional loans and preferential export buyer’s credit to developing countries in the next three years, increasing aid and providing anti-malaria drugs and medical assistance, and contributing to the development of human capital by training professionals from developing countries.

While optimists hope that China will emerge as a champion of developing states, the more cautious simply hope that China avoids manipulating and exploiting the international trade regime for its own economic benefit, or at least does so to a lesser degree than other superpowers have in the past. Most likely


43 The main beneficiaries of “free trade” have been already wealthy, developed countries. Between 1950 and 1990, 57 out of 83 countries with a per capita income of less than $2,000 remained equally poor or became even poorer, while all but 7 of the 52 countries with higher incomes at least doubled their income, and none became poorer. Przeworski at 270 (cited in note 23). By 2000, after another decade of free trade, 54 developing countries were poorer than in 1990. United Nations Development Programme, Human Development Report 2003: Millennium Development Goals: A Compact among Nations to End Human Poverty, available online at <http://hdr.undp.org/reports/global/2003/pdf/hdr03_overview.pdf> (visited May 7, 2006).
China, whether democratic or not, will do what is necessary to solidify power and protect its own economic interests, just like the United States and other powerful countries, although it may be more generous and even-handed toward developing states.

So far, China has adopted a cooperative attitude on economic issues. During the Asian financial crisis, it maintained a stable renminbi (RMB) at the expense of its own exports in order to mitigate the impact of the crisis on its Asian neighbors. In the free trade agreement with ASEAN, China offered unilateral concessions on over 130 agricultural and manufacturing products, granted WTO benefits to countries that are not WTO members, and allowed countries to reap the benefits immediately under an Early Harvest Programme. China has also imposed voluntary export controls on textiles, thereby effectively relinquishing the lower end of the market to Bangladesh and other developing countries. In addition, China allowed the RMB to float within a limited range in response to American pressure, and sought a broad-ranging compromise with the United States and the EU over textiles.

All of these actions are arguably explicable in terms of China’s larger interests. Maintaining a stable RMB during the Asian crisis and entering into a free trade agreement with ASEAN solidified relations with neighbors worried about a rising China. Strengthening regional ties thus both diminishes the likelihood of conflict with the region and provides an offsetting balance to American dominance globally and in the region. With increasingly higher production costs, China may lose the lower end of the market anyway to Bangladesh and other poorer countries. Apart from avoiding the imposition of American tariffs on Chinese goods, China’s adoption of a more flexible exchange rate defuses inflationary pressures and fosters economic stability. A

Using various methodologies to measure inequality, seven out of eight studies by leading economists found that global income inequality has increased as trade increases. Joel R. Paul, Do International Trade Institutions Contribute to Economic Growth and Development?, 44 Va J Int’l L 285, 310 (2003). The gap is significantly larger if one excludes China and India, which account for much of the growth in developing states. Adding insult to injury, developed countries continue to impose unfair trade conditions on developing countries. Agricultural subsidies in rich countries alone amount to more than three hundred fifty billion dollars, six times the total amount of official developmental assistance and sixteen times the amount of aid to Africa. See Commission for Africa, Our Common Interest: Report of the Commission for Africa 27, 280 (2005), available online at <http://www.commissionforafrica.org/english/report/introduction.html> (visited May 7, 2006). Developed countries are simultaneously pushing developing countries to reduce tariffs on manufacturing products and imposing tariffs on products for which developing countries enjoy a competitive advantage. The average tariff on agricultural products is 14 percent in the US and 22 percent in the EU, although tariffs on particular products may be as high as 400 percent. Id.

comprehensive textiles agreement allows all sides to avoid a series of WTO skirmishes that could lead to a trade war.

There can be little doubt that China has already begun to flex its economic muscles. It joined other Asian countries in raising a WTO challenge to the United States over steel imports. It has used its economic leverage to prevent countries from supporting Taiwanese independence and membership in certain international organizations. It has also sought to establish a number of bilateral treaties and various forms of strategic partnerships with countries from Australia to Brazil for both political and economic reasons. A richer and more powerful China will be all the more likely to use its growing economic resources to persuade others to support its policies.

B. HUMANITARIAN INTERVENTION

A non-democratic China will remain cautious about infringements on sovereignty, sanctioning humanitarian intervention only when there is widespread and systematic abuse of rights, most likely subject to approval by the UN. It may also support governments that deal harshly with threats to social order, in keeping with the EAM. A democratic China might be more likely to intervene and less likely to condone violent crackdowns to maintain order, but that is doubtful.

Failed regimes present an interesting case. A stronger, more powerful China, whether democratic or not, is likely to perceive failed states as a threat to geopolitical stability, and a source of terrorism that could embolden separatist movements in China. The initial response may be to address the problems created by global inequality and a discriminatory trade system, and to provide material and technical assistance to developing states. The government has, for example, emphasized a “new security concept” that goes beyond traditional state-to-state military concerns and includes foreign policies that emphasize stability founded on a basis of mutual respect and economic development. A hegemonic China, however, may not have much patience for those states that fail to invest in human capital and institutions, or squander resources because of grand political corruption or ineptitude. In such cases, China might either simply walk away, if the risks to China are minimal, or seek to replace the existing regime, if the risks are greater.

45 See, for example, C.J. Chivers, China Backs Uzbek, Splitting with U.S. on Crackdown, NY Times A3 (May 25, 2005) (noting that China offered support for President Islam A. Karimov of Uzbekistan, who was facing criticism for a crackdown against an antigovernment rally).

III. GEOPOLITICAL STABILITY

Will China be aggressive toward the United States and its neighbors? All one can say for sure is that only time will tell. The claim that China has never or rarely engaged in aggression in its long history is surely a one-sided view of how China came to possess Tibet and Xinjiang, much less of the military conflicts with Korea in 1950, India in 1962, the Soviet Union in 1969, and Vietnam in 1979 and 1988. Although China has avoided military conflict since 1989, it fired missiles and engaged in war games in the Taiwan Strait in the mid-1990s, and had a number of non-military skirmishes with its neighbors over various islands in the region.

By way of comparison, in the last twenty-five years, the United States has been involved in some forty military actions, including wars in Iraq, Afghanistan, Yugoslavia, regime-changing invasions in Grenada, Panama, and Haiti, military assistance to rebel groups in Angola, El Salvador, and Nicaragua, and missile attacks on Lebanon, Libya, Yemen, and Sudan.47

During the war in Yugoslavia, NATO mistakenly bombed the Chinese embassy, although many Chinese to this day believe the bombing was intended to send China a lesson for blocking American efforts to obtain UN approval for intervening.48 In 2001, an American spy plane and a Chinese fighter plane collided some seventy miles off China’s coast, causing the Chinese plane to crash and killing its pilot, while forcing the American plane to make an emergency landing in Chinese territory. Chinese authorities detained and questioned the crew and searched the plane, notwithstanding protests from the United States. After the United States issued an apology, the Chinese government released the crew and the plane.49 The United States has never, however, formally apologized for the 1993 Yinhe incident, when the United States Navy stopped and boarded a Chinese freighter believed to be carrying illegal chemicals, although no chemicals were found on board.50 Such incidents have led to impassioned denunciations of the United States in Internet chatrooms and calls for Chinese leaders to stand up to what some Chinese see as American bullying and intimidation. It is possible that the rise of nationalism may cause Chinese leaders

to be more aggressive in standing up to the United States and other states in the future.

Supporters of the democratic peace theory would argue that a democratic China would not be a risk to geopolitical stability, or at least would be a lesser risk. Yet China becoming democratic is no guarantee of peace. The democratic theory may hold for wealthy, consolidated democracies, but it does not hold for poor and unconsolidated democracies, which are prone to internal and external conflicts. \(^5\) Moreover, China would not be just any democracy, but a new upstart challenging American hegemony. Major powers go to war more often than minor powers, especially when the dominance of the existing hegemon is being challenged.

One potential conflict is over increasingly scarce oil and natural resources. Some fear China’s quest to secure oil and other resources will cause China to support dictators. According to US Congressman Christopher Smith:

China is playing an increasingly influential role on the continent of Africa and there is concern that the Chinese intend to aid and abet African dictators, gain a stranglehold on precious African natural resources, and undo much of the progress that has been made on democracy and governance in the last 15 years in African nations. \(^2\)

How or why China’s policies would be any different than the policies to date of the United States and other G8 countries is not clear. Presumably critics fear that as an authoritarian socialist state, China is less concerned about democracy and human rights than the United States and European countries are. Yet Western countries' history of colonialism, support for dictators during the Cold War, and continued support for authoritarian regimes in oil-rich countries in the Middle East suggest caution in drawing any hard and fast distinctions based on regime type. Whether democratic or not, China may very well end up working more closely with some of the more authoritarian regimes in the world. If so, however, the main reason will be that the geopolitical and economic dominance of the United States and Europe leaves few alternatives. If China is not able to buy companies such as Unocal from developed countries, then it will have to look elsewhere to source its oil.

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51 Edward Mansfield and Jack Snyder show that democratizing states—especially those that democratize before establishing rule of law and other government institutions for checking executive power—are significantly more likely to start wars than either democracies or authoritarian regimes. Edward Mansfield and Jack Snyder, *Electing to Fight: Why Emerging Democracies Go to War* (MIT 2005).

The most likely source of military conflict is the impasse over Taiwan. The best way to avoid a conflict is to maintain the status quo, but domestic political pressures in Taiwan are making that increasingly difficult. The 2004 election in Taiwan demonstrated that the demand for independence is growing, and that Taiwan’s politicians may need to play the independence card to get elected. The perceived wisdom is that there would be a greater chance for reunification if China were democratic. However, reunification under even the most generous self-determination framework would require Taiwan to relinquish de facto sovereignty in many areas, and likely would not be supported by the majority in Taiwan unless the benefits outweighed the costs of decreased sovereignty. Such benefits would most likely be economic in nature, though perhaps the threat of reunification carried out by military force also creates an unwelcome incentive to reunify. On the other hand, it is hard to imagine any Chinese administration, democratic or otherwise, ceding independence to Taiwan in the face of what would almost certainly be massive popular opposition fanned by Chinese nationalists.

While China might go to war over Taiwan, China is not going to export revolution around the globe in the hopes of spreading communism. Within China, socialism as an ideology is increasingly incoherent and obsolete as a basis for policymaking. The Cold War is over. At least, the first Cold War is over. If there is going to be a new Cold War with China, political ideology and cultural issues are not going to be the main sources of contention. The conflict will be due to realpolitik concerns over national security and economic interests.

There is no shortage of contentious issues—on both sides. China objects to American efforts to develop a missile defense system that would allow the United States to fire nuclear missiles at China without fear of counterattack and mutual destruction. It also takes a dim view of American efforts to create offensive weapons in space and to deploy satellites that would disrupt other countries’ satellites, as well as arms sales to Taiwan. Nor does China appreciate the American-led efforts to censure China for rights violations, American pressure to let the RMB appreciate further, the limits on dual-use technologies, agricultural subsidies to American farmers, the invocation of surge mechanisms, or the reliance on anti-dumping cases to protect American industries. The

53 The Ministry of Commerce sets out a long list of what China considers to be discriminatory or unfair practices by the United States, noting the parallel to the demonization of Japan in the 1980s. Ministry of Commerce, Foreign Market Access Report (People’s Republic of China 2005), available online at <http://gpj.mofcom.gov.cn/table/2005en.pdf> (visited May 7, 2006). Bown and McCulloch describe “unprecedented” discriminatory policies against China by the United States that protect domestic industries and favor China’s competitors, and argue that such policies are likely to have unintended consequences for the global economy and American interests. They note, for example, that Chinese companies face the most anti-dumping actions, are the most likely
United States, for its part, objects to nuclear testing by China, arms sales to countries that are not American allies, violations of agreements to prevent the spread of weapons of mass destruction, market access restrictions, intellectual property violations, and a host of other commercial issues. Meanwhile, each side is warily watching the other's efforts to form alliances and enter into bilateral and multilateral trade and security agreements in Asia.

Despite all of the possible sources of conflict, there are many areas where the interests of both parties are aligned. Both China and the United States want to prevent North Korea from obtaining nuclear weapons and destabilizing the region, even if they do not always see eye-to-eye on how best to achieve that. The two sides joined arms, albeit for different reasons, in opposing efforts to expand the UN Security Council. They are allies in the War on Terror. Neither supports the International Criminal Court. Their cooperation is essential for progress on global environmental issues and international money laundering. Their economies are mutually dependent: Chinese purchases of United States Treasury securities are underwriting American trade and budget deficits; American purchases of Chinese products are fueling growth in China. Perhaps most importantly, both sides share a common interest in continued stability in China, and therefore in ensuring that economic, legal, and political reforms continue.

History shows that the rise of a new power usually leads to conflict. Yet a knock-down, drag-out battle with China for world supremacy is not inevitable. This is a different era. There is less emphasis on territory as a source of power. Economic globalization has led to greater codependence. A more developed international trade regime has clarified many of the rules of the game, and the WTO is available to resolve disputes peacefully. And thanks to the global media, the world is better informed about what is happening.

Most importantly, there is a significant role for human agency in avoiding conflict. Although there will inevitably be conflicts from time to time, major conflict can be avoided if both sides are able to overcome their suspicions of each other and work through their differences in a frank but open-minded and constructive way. American policymakers will have to abandon neo-conservative policies that seek to contain China, which is the surest way to bring about the kind of military conflict and economic trade war that all hope to avoid. Portraying China as a threat that must be contained fuels animosity and undermines those constituencies in China working to ensure that China's rise to

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power is peaceful. The United States will also have to stop demonizing China on trade issues and applying double standards on human rights, which only inflames a vengeful nationalism.\footnote{See generally Randall Peerenboom, \textit{Assessing Human Rights in China: Why the Double Standard?}, 38 Cornell Int'l L.J. 71 (2005).} Chinese leaders for their part will have to resist the tendency to dismiss every criticism of human rights violations or expression of concern for Taiwan as an infringement on its sovereignty and an insult to the dignity of the Chinese people.

Both sides will have to make greater efforts to understand each other. Regular meetings of high-level officials, cooperative efforts on economic and legal reforms, and private sector programs to train government officials are all steps in the right direction. The United States—People’s Republic of China Cultural Engagement Act of 2005,\footnote{United States—People’s Republic of China Cultural Engagement Act S 1117, 109th Cong., 1st Sess (May 25, 2005).} if passed, would be another step forward. The Act would provide $1.3 billion over five years for Chinese language instruction in American schools, increase American consular activity supporting American commercial activity in China, and make it easier for Chinese scientists to obtain visas to study at American universities.

In addition to trying harder to understand the other side, both sides will need to be more self-critical about their own shortcomings with respect to human rights, rule of law, trade, and external aggression. Neither side is beyond reproach. Both sides have legitimate complaints and concerns. Both sides face numerous obstacles in resolving their own problems and domestic pressures that politicize and complicate the situation. More humility is needed, especially but not only on the American side. American officials cannot just lecture Chinese officials, as if they were recalcitrant children who needed to be reprimanded by an older and wiser parent. There is a tendency to attribute differences with regard to democracy and human rights to cognitive dissonance—“they just do not get it.” But there are legitimate differences in values and interests at stake. Conversely, Chinese officials cannot rely on misty-eyed invocations of cultural practices to allay concerns that China’s rising will be far from peaceful, especially while insisting that all American actions be viewed through the cold neo-realist prism of state interests.\footnote{Shaojun Li provides a fairly typical account of what many Chinese perceive to be their more ethical approach toward foreign relations: \textit{Strategic culture can explain many things that cannot be explained by realpolitik or realism. In fact, realpolitik and realism in international relations do influence China’s choices of nuclear arms control and disarmaments, but the development model of Chinese civilization and the traditional political culture influence Chinese behavior as well. A contrast of the two reveals that the latter influence is at a much deeper and substantive level. . . .} During the
issues. Politicizing debates, reducing complex issues to sound bites, exaggerating problems, distorting facts, and demonizing the other side do not help.\textsuperscript{57}

The historical process of thousands of years of Chinese civilization, invasions by peripheral tribes and punitive expeditions by central dynasties were common occurrences. \textellipsis{} According to historical records, Chinese dynasties sometimes engaged in war, but most times implemented policies of peace with peripheral tribes, such as establishing friendly relations, trading, intermarrying, enfeoffing, and moving them to the hinterland. The trade-off between war-like policies and peaceful policies consisted of the following: (1) China engaged in wars generally under conditions beyond its endurance. The basic purpose was to remove external threats, not to expand territory. Therefore, the Chinese military would always return after a victory. (2) For the Chinese dynasties, war was a means and peace was \textit{the} object. The ancient politicians knew that invaders would return if peace were not established. After winning a battle China would seek a friendly relationship and indicate its power and kindness. (3) During conflicts with peripheral tribes, China emphasized its civilizing role. Ancient Chinese politicians thought that China could realize unification \textit{“under Heaven”} through the spread of its culture, which was characterized by benevolence.


\textsuperscript{57} The Schumer report on the \textit{“one-way street”} for foreign investment is an example of a political hack job that hinders rather than facilitates resolution of tough trade issues. The report contains serious misstatements of PRC foreign investment laws that anyone with the slightest familiarity with Chinese business would know are clearly false, such as that PRC law forces foreign companies to enter into a joint venture with a Chinese partner rather than allowing them to set up wholly foreign-owned companies. Charles E. Schumer, \textit{China’s One-Way Street on Foreign Direct Investment and Market Access: China’s Government Imposes High Hurdles to Foreign Investment and Business in China, Particularly in America’s Most Advanced Industries} (2005), available online at \textless{}http://schumer.senate.gov/SchumerWebsite/pressroom/special_reports/2005/08.18.05\%20China\%20Report.pdf\textgreater{} (visited May 7, 2006). The whole notion of foreign investment being a one-way street because China does not allow or excessively restricts foreign investment is absurd. According to the Ministry of Commerce, over forty-five thousand US companies have set up companies in China, with almost four thousand in 2004 alone. In contrast, 883 Chinese companies have set up shop in the US, and only 87 in 2004. The total amount of contracted foreign direct investment from US companies is almost $100 billion, in comparison to $1 billion for Chinese investors in the US.

China stands out among developing states, including East Asian states during their economic rise, for its openness to foreign investment and import trade. Its average tariff rate of 10 percent is much lower than that of Argentina (32 percent), Brazil (31 percent), India (50 percent), and Indonesia (37 percent). Its ratio of imports to GDP is almost 35 percent, compared to 9 percent for Japan. In 2003, the ratio of the stock of foreign investment to GDP was 35 percent in China, compared to 8 percent in Korea, 5 percent in India, and 2 percent in Japan. Ministry of Commerce, \textit{Foreign Market Access Report} (cited in note 53); Lee Branstetter and Nicholas Lardy, \textit{China’s Embrace of Globalization}, Asia Program Special Report No 129, 6 (July 2005), Woodrow Wilson International Center for Scholars, available online at \textless{}http://www.wilsoncenter.org/topics/pubs/AsiaReport_129.pdf\textgreater{} (visited May 7, 2006); Martin Wolf, \textit{China’s Rise Need Not Bring Conflict}, \textit{Fintimes} 1 (Sept 14, 2005).

On the other hand, amidst all the distortion and hyperbole, the report does raise the legitimate concern that China limits or prohibits foreign investment in certain sectors to the detriment of US companies, and has sought to encourage foreign parties to bring high technology to China, though that is generally not a requirement for investment as the report states. Some of the
Genuine dialogue means being able to air differences. There will inevitably be hard negotiations as China continues its march to superpower status. Chinese leaders and negotiators have demonstrated that they are no pushovers. They have resisted foreign pressure to democratize, to mimic Western rule of law, to subject infant industries to global competition, and to prematurely engage in financial liberalization. The development process has been driven primarily by domestic concerns, and what the government has perceived to be in China’s interest. That approach has been remarkably successful so far. But as China grows, it will have to assume the responsibilities that come with being a superpower and forego some of the self-interested policies (from greenhouse gas emissions to violations of international labor standards to intellectual property violations) that may be justified for developing states trying to catch up but are not acceptable for one of the world’s great economic and political powers.

Whether democratic or not, China’s rise to power will present significant challenges to the current world order. Perhaps the best reason for hoping that major conflict can be avoided, despite the many risks, is that the costs to everyone of failing to overcome the obstacles in a peaceful way are simply too high.

IV. CONCLUSION: INTERNATIONAL RELATIONS AS A JOINT VENTURE

In a recent speech that may represent a change in United States–China relations, US Deputy Secretary of State Robert Zoellick encouraged China to be a responsible stakeholder in the international order. In so doing, Zoellick acknowledged that China is now a major power, drew a clear distinction between China and the Soviet Union and rejected the neo-conservative view that China can be contained as well as realist balance-of-power strategies. He also acknowledged that China’s economic policies, including a depressed currency rate, have been beneficial to China, although warning that China has now reached the point where it must compete on more equal terms. Though noting that economic reforms must be matched with further political reforms, Zoellick did not call for democratization now, instead suggesting a more business-oriented approach. This is in marked contrast to President Bush’s recent speech extolling the wonders of freedom and democracy in Taiwan and the remarks of other American officials that China should look to democratic Asian countries for the way forward—the irony being that the lesson China is most likely to

restrictions are clearly meant to protect infant industries, but the report does not consider the substantive merits of such policies. Needless to say, the report does not address China’s complaints about US unfair trade practices.

Zoellick, Whither China (cited in note 3).
draw from the experience of Taiwan and other Asian states is that democratization should be postponed until higher levels of wealth are obtained.

Zoellick’s speech is praiseworthy, particularly given the domestic political context. After all, the Bush administration came into office with a policy of China as strategic competitor. There is still talk among neo-conservatives of the need to contain China, and ominous warnings from the Pentagon about the dangers of China’s attempt to modernize the military. Government officials on both sides of the aisle as well as the American public are up in arms about China’s “mercantilist” economic policies.

Rhetorically, the tone of the speech was on the whole balanced and measured, although at times Zoellick’s remarks seemed condescending, preachy, and hypocritical—such as when he cautioned that “China needs to recognize how its actions are perceived by others. China’s involvement with troublesome states indicates at best a blindness to consequences and at worst something more ominous.”

Substantively, China was offered a place at the table, but on terms that decidedly served American interests: lower currency rates, more protection of intellectual property, more transparency on military spending and plans, and financial support for the war in Iraq, including debt reduction, even though China opposed the war. Chinese concerns over American military and economic policies were not addressed, while the many challenges that China as a relatively poor developing country faces were briefly noted but quickly dismissed. The message appeared to be: now that China is a world power, it should join forces with the United States and other world powers to maintain the international order that serves their interests, even if at the expense of other countries. China should help the United States prevent other countries such as Iran and North Korea from obtaining nuclear capabilities; it should uphold intellectual property rights and support the international trade regime that has so greatly benefited the rich; and it should cooperate rather than compete in securing oil and developing other energy sources to avoid strengthening the hand of the oil cartels and driving up oil prices. Zoellick also warned that until China toes the line, other countries will be forced to “hedge relations with China.”

Zoellick’s speech may provide the basis for a more coherent China policy. At this point, however, China is being offered a minority stake in a joint venture with little chance to determine major policies and few veto rights over key decisions. As a nuclear power and member of the Security Council and one of the America’s leading trading partners, China is already a stakeholder. The

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59 Id.
60 Id.
United States may have to offer China more in the way of positive inducements before China will sign on. It may also have to give up some of the more coercive tools such as the annual censuring of China in Geneva for human rights problems. If so, China might be willing to go along even as a junior partner—for now. But at some point, China’s leaders will want to increase their share in the joint venture, and have more of a say over major policies and future developments.

Whether China’s rising is peaceful will depend in large part on the willingness of the United States and other world powers to recognize and accommodate China’s legitimate interests and growing power, and to continually renegotiate the terms of the venture accordingly. While the relative shares of the existing powers may decrease, the hope is that they will still be better off with a smaller piece of a much bigger—or better—enterprise. But even if China’s rise should lead to relative net losses for existing powers, the alternative of superpower conflict is likely to leave all concerned less well off. For this venture to succeed, all the stakeholders will have to be responsible.