

THE RULE OF LAW AND CHINA

Francis Fukuyama¹

The historical pattern of institutional development between the West and China differs significantly with regard to the rule of law. In the West, rule of law was one of the first major institutions to emerge, preceding both the rise of the modern state and democracy by several centuries. In China, by contrast, a strong state coalesced early on, a state that did not feel normatively bound by any prior set of legal rules. As a result, law plays a very different in contemporary China: while there are legal institutions, they are much weaker and less autonomous than their Western counterparts, and there is no rule of law as such. This has not prevented China from growing rapidly over the past three decades, which should force Westerners to re-examine the current orthodoxy that a strong rule of law is critical to economic growth.

The China model, encompassing a strong centralized state unconstrained either by rule of law or democratic elections, has been remarkably successful in managing the country's economic modernization and emergence as the world's second largest economy over the past thirty years. Whether such a system devoid of checks and balances can continue to perform at this level into the future is one of the central questions of contemporary political economy.

Unhelpful Economists

¹ Portions of this article were drawn from the author's *The Origins of Political Order: From Prehuman Times to the French Revolution* (2011).

The first problem that arises in thinking about the rule law is defining it. Like the term “democracy,” there are a wide variety of meanings given to the rule of law that make theorizing difficult. There has been a huge amount of attention paid to what is labeled the “rule of law” in the past couple of decades as a practical issue in democracy and governance promotion. Much of this interest has been driven by economists, who have their own peculiar understanding of the rule of law and who have, as a result, distorted thinking about what it is and how it comes about.²

When economists speak about the rule of law, they are usually referring to modern property rights and contract enforcement. Modern property rights are held by individuals, who are free to alienate their property without restrictions imposed by kin groups, religious authorities, or the state. The theory by which property rights and contract enforcement are related to economic growth is straightforward. No one will make long-term investments unless they know that their property rights are secure. Similarly, trade requires contracts and a legal machinery to enforce contracts and to adjudicate the disputes that inevitably arise among contracting parties. The more transparent the contracting rules, and the more even-handed their enforcement, the more trade will be encouraged. This is why many economists emphasize the importance of “credible commitments” as a hallmark of a state’s institutional development. There is at this point a substantial empirical literature that correlates strong property rights to long-term economic growth.³

² See Stephan Haggard and Andrew MacIntyre, *The Rule of Law and Economic Development*, 11 *Annual Review of Political Science* 205 (2008).

³ *See, e.g.*, Daniel Kaufmann and Aart Kraay, *Governance Matters IV: Governance Indicators for 1996-2004* (Washington, DC: World Bank Institute, 2005). There was also a prolonged

The problem with the close identification of rule of law with property rights is that it excessively narrows the definition of law, and is inconsistent with the understanding of the term traditionally held by lawyers. By this older definition, the law is a body of rules of justice which bind a community together. In premodern societies, the law was believed to be fixed by an authority higher than any human legislator, either by a divine authority, or by nature. Kings, barons, presidents, legislatures, and warlords could issue new positive legislation. But if they are to function within the rule of law, they must legislate according to the rules set by the pre-existing law, and not according to their own volition.

This earlier understanding of the law as something fixed either by divine authority or by nature implied that the law could not be changed by human agency, though it could be interpreted to fit novel circumstances. With the decline of religious authority and belief in natural law in modern times, we have come to understand the law as something created by human beings—i.e., as a species of positive law—but only under a strict set of procedural rules that guarantee that they correspond to a broad social consensus over basic values. The distinction between law and legislation now corresponds to the distinction between constitutional and ordinary law, where the former has more stringent requirements for enactment like supermajority voting. In the contemporary United States, this means that any new law passed by Congress must be consistent with a prior and superior body of law, the U.S. Constitution, as interpreted by the Supreme Court.

debate over the dubious assertion that Common Law systems were friendly to growth than Civil Law ones. Rafael La Porta, Florencio Lopez-De-Silanes, Andrei Shleifer and Robert W. Vishny, *Law and Finance*, 106 *J. Pol. Econ.* 1113 (1998).

There is obviously some relationship between the traditional legal understanding of the rule of law, and the economists' identification of law with property rights. If a government does not feel bound by a pre-existing rule of law, but considers itself fully sovereign in all respects, there will be nothing preventing it from taking the property of its citizens, or of foreigners who happen to be doing business on its territory. If general legal rules are not enforced in the cases of powerful elites, or against the most powerful actor of all, the government, then there can be no ultimate certainty about the security of either private property or trade.⁴

If we define the rule of law not as credible property rights and contract enforcement, but as the government's acceptance of the sovereignty of a preexisting body of law representing a social consensus on rules of justice, then we can proceed to ask the question, where has the rule of law come from historically, and how might we expect it to emerge in the future?

Religion and the Rule of Law

If one wants to look for a source of social rules that is invariant and reflects the shared moral values of a community, the obvious place to go is religion—not religion as practiced in modern, pluralistic societies, but the religions that defined premodern societies like ancient Israel, Medieval Europe, or the early Islamic world. Religious rules are held by their believers to be not the products of human agency, but of divine authority, and are therefore binding on all human agents, including the political sovereign. Indeed, most rulers in such societies never

⁴ This was the theme in Douglass C. North and Barry R. Weingast, *Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England*, 49 *J. Econ. Hist.* 803 (1989).

claimed they were sovereign; God was sovereign, and the ruler merely acted as God's deputy or vicar on earth.

It is therefore not surprising that the rule of law first originated in societies that were dominated by a transcendental religion, and that the first laws that rulers had to respect were religious ones. The Hebrew Bible and Talmud, the Roman Twelve Tables, the early Church decretals and canons, the sunna and hadith, the vedas and sastras were all recognized in their respective societies as shared rules of justice, and in each society—Israelite, Roman, Christian, Muslim, and Hindu—rulers explicitly recognized a duty to live under the religiously-defined law.

The rulers of many societies outside of East Asia thus recognized that they lived under a law that they themselves did not create. And yet, the degree to which this would impose real restrictions on their behavior depended not just on this theoretical acknowledgement, but on the institutional conditions surrounding the formulation and enforcement of law. The law would become a more binding constraint on rulers under certain specific conditions: if it was codified into an authoritative text; if the content of the law was determined by specialists in law, and not by political authorities; if the law was protected by an institutional order separate from the political hierarchy, with its own resources and power of appointment; and finally, if the law actually corresponded to the lived social norms and values of the community to which it was applied, including the ruling elites who presided over the political system.

In contrast to other law-governed societies, Western Europe was exceptional insofar as law was institutionalized early on and to a higher degree than elsewhere. This was probably less a function of the underlying religious ideas than of historically contingent circumstances of European development, since the Eastern Orthodox Church never went through a comparable

development. It led to an unusual situation in which rule of law became embedded in European society even before the advent not just of democracy and accountable government, but the modern state-building process itself. This is evident in all the dimensions of institutionalized law.⁵

Codification. In contrast to India, where the vedas were transmitted orally and written down only at a relatively late point, the three monotheistic religions of Judaism, Christianity, and Islam were all based from a very early point on authoritative scriptures. In the eastern and western Christian churches, the Bible was supplemented by a confusing welter of Church canons, decrees, and interpretations. This changed in the late 11th century with the rediscovery of the *Corpus Iuris Civilis*, the great 6th century compilation of Roman law under the Emperor Justinian. The sprawling body of cannon law was systematized in the following century in the *Decretum* of Gratian. No similar rationalization of law ever occurred in the Eastern Church, or in the Hindu or Muslim traditions until the codifications that were carried out under western influence in the 19th century.

Legal specialization. The new system based on Roman law was spread throughout the whole of Europe from the great law school at the University of Bologna. Whereas kings, emperors, and other temporal rulers had made ecclesiastical law before the 11th century Gregorian reform, law became the province first of the Church, and then of a legal profession trained in cannon and civil law. In this respect Christianity does not differ substantially from Islam, which also put law under the custody of a hierarchy of legal specialists, the ulama, or Hinduism, where the priestly Brahmin class had a monopoly as specialists in law.

⁵ On this point, see Joseph R. Strayer, *On the Medieval Origins of the Modern State* (1970).

Institutional autonomy. Caesaropapism is a term coined by Max Weber to denote a situation in which temporal authorities have power to appoint and dismiss religious ones. Both the eastern and western Christian churches were caesaropapist until the Investiture Conflict of the 11th century, in which a strong-willed Pope, Gregory VII, challenged the Holy Roman Emperor's right to appoint popes and bishops. The prolonged struggle between Pope and Emperor resulted in the Concordat of Worms in 1122, in which the Catholic Church won the right to name its own cadres. Together with the practice of celibacy for the priesthood, the Church was able to free itself from temporal politics, and created what legal scholar Harold Berman labels the first modern bureaucracy on which later state bureaucracies would be modeled.⁶ No religious establishment in any other cultural tradition ever succeeded in institutionalizing itself to this extent.

Correspondence between law and social norms. The normative dimension of law—that is, the shared belief that the law is fundamentally just and the subsequent willingness of people to abide by its rules—is key to the rule of law. The most secure form of law should not depend on draconian punishments, but rather on voluntary compliance on the part of most citizens. It is not clear that Europe had a particular advantage over India or the Middle East in this regard, since the religiously-based law of all three civilizations shaped and reflected broad social norms. However, one of the great problems with trying to import modern western legal systems into societies where they didn't exist previously is the lack of correspondence between the imported law and the society's existing social norms. Sometimes the importation of legal rules can speed up a process of social change, as when laws mandating equal rights for women are imposed in a

⁶ Harold J. Berman, *Law and Revolution: the Formation of the Western Legal Tradition* (1983).

society dominated by males. But if the gap between law and lived values is too large, the rule of law itself will not take hold.

European political development was unusual insofar as a strong, dominant legal culture emerged in Western Europe during the Middle Ages before there were modern states. There was in fact a kind of trans-national legal culture, underpinned by the ecclesiastical law of the Catholic Church, which shaped and constrained the ability of early modern state-builders in France, England, Spain, and other western countries to accumulate unchecked power. Few absolutist monarchs were willing to openly violate the property and personal rights of their elite subjects without something approaching due process, unlike state-builders in China or Russia who could act with much more arbitrariness and brutality. The emergence of a uniform Common Law in England, which was originally an extension of the law of the king's court and enforced by centralized royal authority, did much to legitimize property rights at a very early point in the country's history.

Europe was no different from other societies insofar as a rule of law protecting citizens against arbitrary actions of the state itself was initially applied only to a minority of privileged subjects. Take, for example, a letter quoted by Alexis de Tocqueville in *Democracy in America* by Mme de Sévigné, one of the greatest salon patrons of 17th century France. This witty and sensitive woman describes how soldiers in Brittany were enforcing a new tax, turning old men and children out of their houses in search of assets to seize. Some sixty townspeople were to be hanged the following day for non-payment. She goes on: "the fiddler who had begun the dance

and the stealing of stamped paper was broken on the wheel; he was quartered [i.e., cut into four pieces] and his four quarters exposed in the four corners of the town.”⁷

Obviously, the French state would not enforce such drastic penalties on Mme de Sévigné and her circle. It is therefore not true that there was no rule of law in 17th century France, but the law did not regard commoners as legal persons entitled to the same rights as the aristocracy. The same was true of the United States at its founding, as it excluded African-Americans, women, and white men without property from the right to vote. The process of democratization is one in which a rule of law applying only to elites is gradually expanded to include all adult persons. This pattern continues to the present day, where the elite rule of law of apartheid South Africa was expanded to apply to non-whites after that country’s transition to democracy in 1992. It is much easier to expand an existing elite rule of law than to create one from scratch.

Law in China

The only major world civilization in which a religiously-derived rule of law did not emerge is China, and the East Asian countries influenced by Chinese culture. The reason is that China never developed a transcendental religion higher than ancestor worship that was broadly accepted by its elites as authoritative. Ancestor worship is not a good source of law since no one has an obligation to worship anyone else’s ancestors; it therefore cannot impose generally binding obligations on a large society. Hence while the Chinese developed extensive legal codes in the Qin, Han, Tang, and Ming dynasties, these were all positive law, that is, enactments by the

⁷ Alexis de Tocqueville, *Democracy in America*, vol. II, part 3, chapter 1, at 537 (trans. Mansfield and Winthrop) (2000).

emperor who did not recognize any authority higher than himself.⁸ The religions introduced into China, such as Daoism, Buddhism, and Christianity, were mostly protest religions not reflecting a larger social consensus.

The rule of law in the sense defined here continues up through the present day. The Chinese Communist Party does not accept the authority of any other institution in China as superior to it, an institution like a Supreme Court that is able to overturn its decisions. While the PRC has a constitution, the party makes the constitution rather than the reverse. If the current Chinese government wanted to nationalize all existing foreign investments in China, or re-nationalize the holdings of private individuals and return the country to Maoism, there is no legal framework preventing it from doing so.

Dynastic China was one of the world's greatest and longest-enduring civilizations. It did not, however, create the institutions necessary to generate or sustain the increases in productivity necessary for long-term per capita economic growth.⁹ Today, by contrast, China possesses the world's second-largest economy in absolute output and has achieved an extraordinary rate of growth over the past three decades. It would not appear, however, that the change in economic

⁸ In theory, the Chinese developed an amorphous concept of "Heaven" after the Shang dynasty whose mandate emperors bore; this hardly amounted to law, however, and was mostly invoked ex post to legitimize a dynastic transition.

⁹ Some have speculated that the country was caught in a high level equilibrium trap in which there were no incentives to invest in the technology necessary to move beyond a pre-industrial economy. See for example Joseph Needham, *Science and Civilization in China*, 25 vols. (1954-); Mark Elvin, *The Pattern of the Chinese Past: A Social and Economic Interpretation* (1973).

performance was due to modern China's development of a rule of law and modern property rights in the sense understood in the West. This suggests that the theory placing rule of law front and center as the explanation for modern economic growth is somehow wrong.

The absence of rule of law or other procedural checks on a Chinese emperor's power meant that China was periodically subject to a type of despotism unknown in most of Western European history. Chinese history is littered with cases of "bad Emperors," like Qin Shi Huangdi, the monarch who created the first unified Qin state, or the "evil Empress Wu" of the Tang dynasty who succeeded in killing off much of the Tang aristocracy, or the Wanli emperor in the Ming dynasty who refused to come out of his quarters for nearly a decade and let state affair languish in the face of a growing foreign threat from the Manchus. Chinese rulers unlike their European counterparts did not have to seek permission from sovereign courts or parliaments in order to raise taxes. Not only could they arbitrarily set tax rates through simple executive order, but they could also confiscate property at will. Unlike the "absolutist" monarchs of early modern France and Spain who had to proceed in a very gingerly way when confronting powerful elites, the first Ming emperor Taizu simply confiscated the lands of the largest landowners in the realm. He was said to have liquidated "countless" affluent households, particularly in the Yangtze delta where he believed he faced particularly strong opposition.¹⁰

Nevertheless, the majority of Chinese emperors did not abuse their powers to the degree theoretically possible, both in matters of routine taxation, and in their willingness to violate the

¹⁰ Denis Twitchett and Frederick W. Mote (eds.), *The Cambridge History of China*, Vol. 8, *The Ming Dynasty, 1368-1644*, Part 2, 110 (1978); Ray Huang, "Fiscal Administration During the Ming Dynasty," in Charles O. Hucker and Tilemann Grimm (eds.), *Chinese Government in Ming Times; Seven Studies* 105 (1969).

personal integrity of their elite subjects. The real constraints on Chinese power were different, and were of three basic sorts.

First, some Chinese emperors were not concerned to maximize their revenues. Mancur Olson's assumption that any ruler would want to do so reflects the common assumption of modern economics that maximization is a universal characteristic of human behavior.¹¹ But this is an anachronistic projection of modern values backwards into societies that didn't necessarily share them. The first Ming emperor Taizu was an austere autocrat who cut the size of the central government and avoided foreign wars; his granaries actually ran surpluses. Chinese monarchs, no less than rulers of other premodern societies, often exhibited what economist Herbert Simon has labeled "satisficing" rather than maximizing behavior.¹² That is, in the absence of an urgent need for revenue like a war, they were often content to let sleeping dogs lie and collect only the amount of revenues required for their regular needs. A truly determined emperor could decide to behave like a maximizer, and some did so, but the idea that all autocratic political leaders automatically maximize is manifestly not true.

Second, there was a simple lack of administrative capacity to carry out orders and in particular to extract a high level of taxes. China was already a huge country at the beginning of the Ming dynasty, with a population of over 60 million in 1368 that grew to 138 million by the

¹¹ Mancur Olson, *Dictatorship, Democracy, and Development*, 87 *Am. Pol. Sc. Rev.* 567 (1993).

¹² Herbert Simon, *Theories of Decision-Making in Economics and Behavioral Science*, 49 *Am. Econ. Rev.* 253 (1959); Simon, *A Behavioral Model of Rational Choice*, 59 *Q.J. Econ.* 98 (1955).

seventeenth century.¹³ The challenges of collecting taxes over so vast a territory were daunting. The draconian powers of taxation and confiscation held by emperors also tended to be a wasting commodity. It could be used early on in a dynasty when the emperor was consolidating power and settling scores with former opponents. But as time went on, the palace found it often needed the cooperation of those same elites and dramatically reduced tax rates in the same areas he had earlier confiscated property.

A third limitation, related to the second, was the need for delegation. All large organizations, whether governments or private corporations, have to delegate authority, and when they do, the “sovereign” sitting at the top of the administrative hierarchy loses an important degree of control over the organization. The delegation can be to functional specialists, such as budgeting officers or military logisticians; or it can be regional, to a hierarchy of provincial, prefectural, municipal, and local authorities. These delegations are necessary because no ruler can ever have enough time or knowledge to actually make all of the important decisions in his or her realm.

With the delegation of authority, however, goes power. The agents to whom power has been delegated have authority over the delegator in the form of knowledge. This can either be the technical knowledge that goes with the running of a specialized ministry or agency, or the local knowledge of particular conditions existing in a certain region. It is for this reason that organizational specialists like Herbert Simon have argued that authority in any large bureaucracy

¹³ Angus Maddison, *Chinese Economic Performance in the Long Run 960-2030* 24 (2d. ed. 2007).

does not flow only from the top of the hierarchy to the bottom, but oftentimes in a reverse direction as well.¹⁴

Indeed, it is clear that the greatest threat to the property and liberties of ordinary Chinese in traditional China was not a despotic central government, but rather a combination of local aristocratic oligarchs who used their first-mover advantages to accumulate large latifundia at the expense of peasants, together with precisely those local government agents designated to carry out the emperor's orders, but who were not effectively controlled by him. Chinese history is replete with often unsuccessful attempts by emperors to engage in land reform or otherwise protect the interests of non-elite subjects.

Although its basis of legitimation is very different, the contemporary government of the Peoples Republic of China bears many structural similarities to that of dynastic China. Then as now, what the Chinese are good at is centralized, impersonal bureaucratic administration. The Chinese Communist Party, while not formally accountable through democratic elections or bound by a rule of law, nonetheless tries to respond to popular demands and serve what it construes as public interest. Unlike certain African dictatorships, Chinese authoritarians are not predatory rulers trying to extract the maximum possible rents out of their society for their own personal benefit.

In many ways, property rights today are not terribly different from what they were in dynastic China. Deng Xiaoping's 1978 reforms that de-collectivized agriculture did not lead to the creation of modern property rights. The state continues to own most land in China; private individuals hold usufructuary rights to its use under long-term leases. Then as now there is no

¹⁴ Herbert Simon, *Administrative Behavior: A Study of Decision-Making Processes in Administrative Organization* 180 (1957).

Chinese equivalent of the fourteenth amendment and its guarantees of “due process”; illegal “takings” occur all the time throughout China.

Indeed, it is striking the degree to which the same pattern of injustice with regard to property rights occurs in modern China as in historical times. It is most often a private developer in league with a local government that arbitrarily takes land from hapless peasants or other non-elites. The worst forms of corruption are said to occur at a local rather than at a national level, and the central government is often called upon to correct these abuses. Accountability goes upwards only to the higher levels of the party, as it once did to the emperor; justice is served only when the abuse is egregious or word leaks out and the party feels compelled to discipline its own cadres. One advantage that contemporary Chinese rulers have is the availability of modern information technology through which they can track local developments: though they control political dissent closely, they also try to respond to citizen complaints on the Internet and other forms of social protest that comes to their attention.

It is clear that contemporary China does not possess either rule of law or property rights in anything close to the form that Westerners associate with those institutions. There are no formal legal constraints on the discretion of the Chinese state; the courts are not powerful, autonomous institutions capable of disciplining Chinese political leaders; most property is held in usufruct and not owned absolutely; and property rights are often violated in an arbitrary way. Nonetheless, China has a controlled market economy and has grown extraordinarily rapidly in the last generation. This suggests that any theory that associates economic growth with the procedural forms of the rule of law that exist in the West need to be seriously rethought. China obviously has property rights that are “good enough” to sustain rapid economic development. Both the Chinese themselves and foreigners make large investments in confidence that they will

be able to earn a return over relatively long periods of time. But this has much more to do with the informal character of these rights than their formal or procedural nature.

The China Model

The China model is a form of authoritarian capitalism with very specific Chinese characteristics that distinguishes it from other varieties found in Russia, Iran, Singapore, or other countries to which it is often compared. The economic part of the model is unpinned by a heavy export emphasis driven by pervasive state intervention in an otherwise competitive market economy. This intervention takes several forms: management of the currency to keep it below market-clearing levels through careful control of currency reserves and heavy financial repression; a modified industrial policy that does not so much seek to promote winners like the South Korean version as to create generally favorable conditions for employment-generating exporters; and continuing use of state-owned enterprises and banks as a means of managing the economy. The political side of the model consists of a monopoly of political power by the Chinese Communist Party and its replication of government functions in its own bureaucracy; relatively high-quality economic decision-making at the higher levels of the party; collective leadership that, within the party, is fairly well institutionalized; and a degree of development-mindedness and willingness to respond to popular demands that sets it apart from more predatory authoritarian regimes.

The legal part of the China model is harder to describe because many of the institutions are informal. There is of course a formal legal system, as well as a relatively large arbitration system (as in other Asian countries) that performs dispute-resolution functions for ordinary

people.¹⁵ These courts however are not institutionally autonomous from executive power in China and in matters deemed important to the Party can be overridden. There is a high level of perceived corruption in China, particularly at lower levels of government. The reason that domestic and foreign investors are still willing to take long-term risks in China has to do with their perception that the Chinese government in its own self-interest will not harm their property rights, which makes them “good enough” to underpin growth. Most of the unjust and illegal “takings” that the Chinese government engages in are against relatively powerless peasants and non-elites, and are done in the name of rapid economic development. Unlike the situation in Russia, there have been relatively few cases of the government confiscating or otherwise strong-arming large foreign investors (something that has nonetheless not deterred substantial foreign investment in Russia either). China thus remains an example of what North and Weingast label a “limited access order,” in which the government decides who will and will not be able to compete in the economic system.¹⁶

The Future of the Model

The Chinese model has been remarkably successful in promoting economic growth in a very large country up to now, but what are its long-term prospects when compared to a liberal democracy like those in North America, Europe, or Asia? China has some clear advantages with regard to the speed with which it can make large, complicated decisions over a typical

¹⁵ Martin M Shapiro, *Courts, A Comparative and Political Analysis* (1981).

¹⁶ Douglass C. North and Barry R. Weingast, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History* (2009).

democracy with the latter's lobbies, interest groups, and need for political consensus. On the other hand, the Chinese system has at least three long-term liabilities that are likely to impact its performance in the future.

The first has to do with the ability of a centralized bureaucratic system to continue to manage a large, complex, and rapidly changing society. As noted above, the system is much more responsive to popular pressures than many other authoritarian regimes; the party monitors public protest and encourages competition among local government units in meeting public goals. But the system ultimately faces immense information problems in actually knowing what is going on in the society, in the absence of institutions like elections and a free media.

The second problem is what the Chinese have traditionally labeled the "bad emperor" problem, which is most directly related to the absence of a rule of law. An authoritarian government run by competent and publicly-minded technocrats can often outperform a democracy precisely because it can cut through the procedural niceties imposed by elections and a rule of law. But what guarantees that it will always have good leaders? Chinese history as we have seen has been littered with periodic "bad emperors" who have wreaked enormous havoc on the society. The last bad emperor generally acknowledged as such by many Chinese was Mao Zedong, who unleashed a Cultural Revolution the trauma of which still haunts the memory of many living Chinese. While the rule of law may lead law-bound societies to underperform in certain circumstances, they provide a floor protecting society from the worst rulers.

The final problem with the Chinese model is the lack of legitimacy. The basis of the legitimacy of the Chinese Communist Party's continued rule is not clear, since its Marxist ideological self-justification has been undercut by its own policies. It has sought alternative forms of legitimacy on the basis of its management of economic growth, and through the

cultivation of Chinese nationalism. Both of these paths are fraught with danger, however. Double-digit growth and employment expansion will not continue forever, and nationalism is a two-edged sword that eludes the Party's control. The egalitarian pretensions of the Party are contradicted by the sharply rising degree of economic inequality in Chinese society, and a broad perception of corruption among China's new elites. A society with a strong rule of law, by contrast, finds legitimacy and social consensus in the law itself, which is superior to and more stable than the performance of a given government.

The Western European pattern of development was one in which the rule of law existed before anyone tried to construct a strong, modern state. As a result, law prevented the most tyrannical forms of government from ever appearing in the first place. In China, the reverse happened: a strong state arose early in its history, which has never seen itself bound by pre-existing law. Both of these systems appear to be capable of generating rapid economic growth. We should admit to ourselves that we have very little historical experience with how a rule of law might evolve in a country like China that has not experienced institutional constraints on executive power. And we also do not know how sustainable such an unbalanced, unchecked system will be under the external conditions it will face in the future.