



CHINA AND ITS DEVELOPMENT MODEL: A BROAD OUTLINE FROM A MEXICAN PERSPECTIVE

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ABSTRACT. *China's economic success from 1978 to 2008 is truly surprising, for example the growth rate of its GDP (an average of 10% a year for thirty years, third place in the world in 2008, 14 times its GDP from 1978 to 2007). However, we could also add that China's economic history is very far from being over, and in the future it will continue surprising us with its innovations, which it will have to keep in mind if it wants to have a close idea of the most successful development strategy of recent decades.*

KEY WORDS: *China, Development Model, Deng Xiaoping.*

RESUMEN. *El éxito económico de China de 1978 a 2008, es verdaderamente sorprendente; como el crecimiento porcentual de su PIB (10% anual promedio durante treinta años; tercer lugar mundial en 2008; de 1978 a 2007 incrementó su PIB 14 veces). Sin embargo, también podríamos agregar que la historia económica de China está muy lejos de estar concluida, y en el futuro nos seguirá sorprendiendo con sus cambios, los cuales habrá que tener muy presentes, si se quiere tener una idea cercana con la mejor estrategia de desarrollo de las últimas décadas.*

PALABRAS CLAVE: *China, Modelo, Desarrollo, Deng Xiaoping.*

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I. INTRODUCTION

The reform in China is a great experiment that is not found in books.

DENG Xiaoping (1985)

Despite its success and widespread diffusion of its results, China's economic reform from 1978 onward is still a topic that is difficult for the Western world to interpret. From its inception, the creator of the model, Deng Xiaoping, warned that reforming modern China was a "great experiment" based on a broad outline and subject to trial and error. While Deng pointed this out in 1985, a trusting, overestimating Western world has not yet completely understood this unilateral declaration from the main author of Chinese success. From the beginning, it told the world that a new China was embarking on the adventure of traveling through unknown paths towards development despite the economic failure of its previous experience (the Maoist Period 1949-1976) and the urgent need to feed around 900 million people (1978), of which nearly thirty million had died of starvation just eighteen years before.

In the Western world, however, different development theories continue to compete between the prevalence of politics over economics and/or vice versa. In a never-ending search for predominance, analysis is frequently complicated, more than clarified, by forgetting that a healthy relationship between politics and economics is inherent to successful economic development. There have been many disputes within economic development theories regarding the different visions that have tried to be imposed throughout the 20th century in search of sustained development. This has occurred in spite of the fact that, as Douglass North points out, "...the similarity in the performance of the economies and the persistence of disparate economies

throughout time has not been satisfactorily explained by the development economists, despite immense efforts carried out for 63 years. The simple fact is that the theory used is not up to the task.”¹

Despite the various formal economic development theories that have appeared since 1943 (Paul Rosenstein-Rodán), the new political group that began to re-think China’s growth did not directly incorporate contemporary theories (Clark, Nurkse, Lewis, Rostov, etc.) when instrumenting their initial changes. China was well aware of its enormous economic limitations at the time: limited resources, overpopulation, widespread poverty, a lack of savings, an economy in arrears, ineffectual industry, a lack of infrastructure, limited external trade, an abundant but unqualified workforce, a lack of modern technology and a political crisis, among others. Its failure to fully adopt an earlier model (the Soviet model) led it to believe that reductionism was not the best way to attain successful development. As Oded Shenkar points out:

The first 27 years (1949-1976) of the communist phase will continue being cause for debate; although little by little the apologists from the period of Mao Zedong are decreasing. However, regarding the economy and politics, there are no absolutes, and although the general results from the period are negative and at times were chaotic, such as the famine that presented itself in the middle of the period, it can be said that within it some lessons were generated for the Chinese model that were greatly useful in its new boom, from 1978 onward. The first theory among them that can be highlighted is the one that detaches from the Great Leap Forward and the Cultural Revolution, which consisted of pointing out the fact that the forcing the ideology of the economy produces catastrophic results, that concrete results for development must be oriented toward this theory. At the very time that it was impossible to continue with the Russian model of investing and creating infrastructure in the whole territory in such a big country with so few resources, the advisable thing to do was to focus the effort on the areas with the greatest potential, in order to later disseminate the results, an experience that has been one of the most important points of the new development model, and finally, that the viability of the political project necessarily requires economic success.²

Thus, talking about China’s new development model is not an easy task. Its political environment from preceding years was imbued with intense nationalist sentiment. Its idiosyncrasy and its multi-layered past intertwine and confuse observers with their various settings. Its political-economic platform derives from a centralized model and it has recently implemented a market economy. In view of their different natures, all these aspects continue to dis-

¹ JUAN GONZÁLEZ GARCÍA, *PERFILES RECIENTES DEL DESARROLLO ECONÓMICO DE CHINA* 17 (Universidad de Colima-UAM México, 2006).

² ODED SHENKAR, *THE CHINESE CENTURY* 34 (Wharton School Publishing, 2005).

tort the opinion of a Western world accustomed to dichotomous economic models (Communism-Capitalism) and that as early as 1989 thought could be synthesized into a single model after the fall of the former Soviet Union. In an attempt to analyze certain qualities of the current Chinese development model, it is useful to follow Deng Xiaoping's advice and heed his warning: starting from the premise that it is a "great experiment" that has not been deciphered in important economic treaties. It is an experiment thought out and executed by a group of engineers and it must be seen as something outside familiar paradigms within the framework of the new global order.

The three sections of this paper are as follows: II. Economic Development as a State Priority; III. The Law as Leverage for Development and IV. Evaluation and Conclusion, in order to outline the new development model of the People's Republic of China.

II. ECONOMIC DEVELOPMENT AS A STATE PRIORITY

Development by any means, without altering social stability.

DENG Xiaoping

In the political crisis of the late seventies, China's immediate challenge was to grow at any cost to meet the urgent demands of its people. The previous economic model had already failed and outside China, future growth wavered between the "success" of developed Western economies and an early prospect of globalization that was starting to outline a new order for international development. Thus, the starting point for the first reforms was clearly the need to implement an outward-oriented political-economic system. Deng used all the State's power to design a new development model that centered on increased foreign trade. For this purpose, pertinent parts of Taiwan's economic model were analyzed. It was noted that between 1960 and 1965 its GDP had grown an average of 9.5% while China was unable to go beyond 4.7%. Between 1965 and 1972, when the Chinese GDP rose only 1%, Taiwan's grew at a rate of 10.1%. Consequently, the Taiwanese example³ served as a starting point for the economic plan that Deng called "the four modernizations" to attain "economic development by any means."⁴ Various trade missions were sent to northern Mexico at

³ In addition to looking at Taiwan, Deng studied the experiments carried out in Sichuan, his native province, which succeeded in multiplying agricultural production by 79% between 1976 and 1979.

⁴ The new regime's objective was to attain China's economic development by means of modernization in four areas: agriculture, industry, national defense, and science and

that time to see the assembly plant model first-hand. These visits also played an important part in devising the new Chinese model.

1. *A Broad Outline of Deng Xiaoping's Economic Theories behind the Chinese Development Model*

In the early stages of reform, Deng Xiaoping would say,

Once we are certain that something has to be done, we should dare to experiment, to break out, and to mark new paths with it. This is the important lesson that we should learn from Shenzhen. If we do not have a pioneering spirit, if we are afraid to take risks, if we do not have energy and direction, we cannot break out and mark a new path, a good path, or do something new... No one can be 100% sure from the beginning that what he is doing is right. I have never been so sure. Every year, the leaders should review what they have done, continue with the measures that have proven adequate, act immediately to change those that have proven wrong, and face up to new problems as soon as they are identified.⁵

Deng's own life (1904-1997) falls within one of the most chaotic eras of Chinese history. He lived through the end of the Empire (1912), as well as through various revolutionary movements (1912-1949) and the Japanese invasion (1931-1945). During the Maoist Period (1949-1976), he met with different movements, like the Cultural Revolution (CR, 1966-1976), which made him the target of strong political attacks from the more conservative groups.

After the triumph of the Revolution and confronted with different social challenges, Deng's discourse was marked by starting from the current situation in order to find new that would take China out of poverty, a course which clashed against the central power's triumphalist and dogmatic discourse. In 1957, he pointed out that "Seeing everything through rose-colored glasses and too simplistically is manifest in our propaganda, idealizing the current situation of our country as if there were no longer any difficulties and we only need to enjoy the amenities." He added, "[o]ur main task from now on is building, which will be somewhat more difficult, or at least not easier, than the Revolution..."⁶ In the face of the challenges of his time he spoke of "learning, of course, from all the advanced experiences of the world, learning how much they have advanced in different parts of the world, including the United States." Although in the fifties, he naturally put

technology. Under the leadership of Deng Xiaoping, greater emphasis was placed on them to position China at the forefront of all world nations. JOHN KING FAIRBANK, CHINA: UNA NUEVA HISTORIA 486 (Andrés Bello, 1996).

⁵ DENG XIAOPING, SELECTED WORKS, Vol. III, 361 (1994).

⁶ DENG XIAOPING, SELECTED WORKS, Vol. I, 295 (1994).

the Soviet Union in first place. He likewise recognized that “[i]n China, many national capitalists opened their paths in the midst of arduous struggles, and they know more than we do about business management.” This opinion, which grew out of building up a new framework for growth, led to his having multiple enemies and posed serious threats to him during President Mao’s orthodox and distinctive “school of thought” for using his discourse and work in the Party to incite the country to follow the capitalist path.⁷

In spite of the opposition, he rose to power upon Mao’s death. Deng then had the opportunity to put his ideas into practice, which basically stemmed from bringing together three factors: development, structural reforms and political stability. As to this, he pointed out, “[t]he solution to all of China’s problems depends on economic development,” because “[d]evelopment is the absolute foundation and in order to achieve it, it is necessary to insist again and again on the reforms that make it possible.” In 1985, he added, “[a]ll our reforms are aligned with a single objective, which is to remove the obstacles that limit or inhibit the development of productive forces, which, in turn, should be directed toward creating a technological basis for development.” Deng’s theory always regarded the link between reform and development as something perfectible with time and subject to trial and error; the reform to be applied should aim for the best possible development. Reforms are like permanent public policies that correct everything that does not contribute to development. However, he always maintained that these two premises would not be possible without the stability in the country brought about through social and political balance among its participants. On this topic, Deng Xiaoping declared, “If there is no stability, brought on by political disparities, it will be impossible for us to move toward social construction.”⁸

This simple reform-development-stability trilogy forms the theoretical basis of Deng’s development model. Its main challenge was to achieve a balance of the concepts in time, so that their combined effect would translate into benefits and improvements for the different social classes. Regarding this, Deng explained, “[t]he basic expression of the superiority of our socialist system is found in the possibility that the productive forces of our society can grow rapidly, at rates never before seen in the old China, and gradually give us the satisfaction of the cultural and material improvement that our people need.”⁹

While various reforms for economic and commercial growth were being built around this development strategy, the long-term vision of the project

⁷ DENG LONG, DENG XIAOPING AND THE CULTURAL REVOLUTION 35 (Foreign Languages Press, Beijing, 2002).

⁸ WANG MENGKUI, CHINA’S ECONOMIC TRANSFORMATION OVER 20 YEARS 32-38 (Foreign Languages Press, Beijing, 2003).

⁹ *Id.*

emerged: the knowledge of knowing what is desired and what is possible, and the certainty of knowing in which direction to go. In 1978, Deng Xiaoping said, “[t]he essence of the reforms is to build the foundations for sustained development for the next decade and the first fifty years of the next century.” He devised a strategy with a view towards the future that he called “the three steps.” “In this century, we will take two steps, which represent the solution to the problems of an adequate supply of food and clothing for our people. In the next century, we will spend another 30 or 50 years to achieve the goal of another step, which is to reach the level moderately developed countries of the world have.”¹⁰

Deng was a visionary with a great capacity not only to adapt to the new political period his country was entering after living practically walled in, but also to understand the great global transformation the world was experiencing in the late 1970s and to lead China to take advantage of this situation. In 1987, he said “[c]urrently, there are two models of productive development. Insofar as each one of them serves our purposes, we will make use of it. If socialism is useful to us, the measures will be socialist; if capitalism is useful to us, the measures will be capitalist.” In an unusual approach, he pragmatically pointed out,

[t]here are no fundamental contradictions between socialism and the market economy... The experience that we have gained throughout recent years has demonstrated to us that we could not develop productive forces in a rigid economic structure. It is for this reason that we have been implementing some useful capitalist measures. It is clear now that the correct approach for opening oneself to the world is combining a planned economy with a market economy, to which structural reforms are implemented.¹¹

This combination of concepts gave way to what we now know as “market socialism.”

“Surely the affirmation that the market economy only exists in capitalist society, that there is only a capitalist market economy, is incorrect. Why can’t socialism practice the market economy?”¹² This stance defined and revolutionized the paradigm of his central planning model and the theory of the capitalist model was met in the same way. After all was said and done, what stood out was the pragmatic and utilitarian intention of transforming economic models from ends to means. It did not matter whether the cat was black or white, Deng said paraphrasing an old Chinese proverb, what mattered was that it caught mice. He added, “[t]here is no fundamental contradiction between socialism and a market economy, ‘both are means.’” Even today, both (capitalist and socialist) theories continue to seek

¹⁰ *Id.*

¹¹ *Id.* at 40.

¹² DENG XIAOPING, *SELECTED WORKS*, Vol. II, 266 (2nd ed. 1995).

answers that clearly explain this new model, which has validated itself through the success of its results.

On the topic of structural reforms, Deng indicated in the eighties that “[w]ithout development, reforms don’t mean anything.” To that, he added, “[t]o reform was to remove the production relationships and the superstructures that weren’t driving the development of productive forces.”¹³ Reform-development, development-reform, this new learning curve drew from successful experiences in the world, a learning process that compared the challenge to crossing an unknown river leading to development that would benefit the people. Therefore, “one should proceed with caution, feeling the stones.” To do this, every reform and every development had to comply with three objectives (the three “favorables”) to be considered viable and thus be approved. The criterion focused on *a*) whether it promotes the growth of productive forces, *b*) whether it increased the strength of the Socialist State, and *c*) whether it raised people’s living standards. A clear understanding of a globalization in its initial stages more than a quarter of a century ago and the implementation of a winning strategy to participate in it contrasts with the lack of direction a number of economies present today.

2. *A General Outline of the Economic Model*

The combination of public policies the new Chinese model adopted, regardless of their origin, has led to a pragmatism that breaks with traditional methods of analysis and enhances China’s economic results. After the fall of the Berlin Wall, the West consolidated its idea of a victorious free market model that was positioned well above the central planning strategy implemented by the former Soviet Union, which had clearly demonstrated its incompetence when compared to its Western counterparts. In the face of failure, both China (1978) and the former Soviet Union (1989) opened their borders and emerged into the world. The most foreseeable conclusion was that they had to put the neo-liberal model into practice and wait their turn in a pre-determined economic order. With the difference of only a decade, Russia followed a shock therapy strategy using the IMF model and established an open privatization plan (*laissez faire*) that was abruptly carried out under the 500-Day Program. It resulted in the massive closing of businesses and the loss of an important number of strategic State assets. This model instigated the full opening of its market and the free exchange of its currency, which brought about enormous debt and a financial crisis that entailed the loss of 4.2 times its gross national product (GNP) between 1992 and 1996. This strategy also led to a drop in income for 60% of the population while levels of extreme poverty rose to 40%. Moreover, only 10% of the

¹³ Mengkui, *supra* note 8, at 38.

population had access to higher levels of wealth and the development of Russian economy was thrown back twenty years.¹⁴ In contrast, the gradual progression, selective openness and comprehensive strategy the Chinese State implemented in its economic development model produced completely different results.

One aspect stands out from among the different paths of learning gathered from the new Chinese development model: its caution in not impetuously giving over to the offer of free market models, as Russia and most Latin American countries have done. In addition to “feeling the stones of the new river,” there is the wisdom of putting national interest and reality ahead of the different strategies being implemented without deterring them from inventing new, unproven formulas in the midst of a new free market dogmatism that worshipped the invisible hand of development. Some authors point out that, “[i]t is precisely the success of the Asian nations that allows current free market theorists, especially civil servants in the World Bank and the International Monetary Fund, to highlight the goodness of the free market, and, given its importance in the adjustment and stabilization programs, brings about the resurgence of the neoclassic paradigm.”¹⁵ As far as China is concerned, this idea is not wedded to a socialist market model that benefits from all kinds of strategies, regardless of their origin. The only requirement is that they contribute to its development.

At the 15th Congress of the Chinese Communist Party (CCP), China defined its model as follows:

[t]o build a socialist economy with Chinese characteristics means developing the market economy under conditions of socialism and constantly emancipating and developing productive forces. We should maintain and improve distribution models based on the dominant work, allowing certain people and certain areas to be prosperous in the beginning so that they can later help others and thus achieve prosperity step by step.¹⁶

The new Chinese model is defined, first of all, by its awareness of historic change: that of facing a decision that if it succeeds, it would require its people’s effort for around 100 years. It was also conceived as a gradual transition from an illiterate rural country to an industrialized one with high levels in science, technology, education and culture. It would merge its economic future with the favorable aspects of a market economy. It was seen as a historical period in which the free market would not affect its strong socialist system upon which they would build a socialist regime with Chinese characteristics, a socialist economic system and a socialist democratic politi-

¹⁴ *Id.* at 19.

¹⁵ JUAN GONZÁLEZ GARCÍA, PERFILES RECIENTES DEL DESARROLLO ECONÓMICO DE CHINA 29 (2006).

¹⁶ Mengkui, *supra* note 8, at 23.

cal system. This last point is the most difficult for Western observers to understand since they forget that throughout the different stages of China's economic development, the State has never stopped taking direct responsibility for the different policies made and this is seen at every step of its burgeoning private sector's contact with Western economy. China never accepted the simplistic concept of the "invisible hand of the market," but has opposed the "visible hand of the State" since its opening. This reflects its commitment and direct responsibility over the success of its sectors, businesses and businesspeople, and is one of the distinctive fundamental elements of the Chinese model.

3. *Instrumenting a Selective Opening Policy*

Development requires getting rid of all the notions that hinder it; changing all the practices and regulations that prevent it, and liberating itself from economic burdens.

JIANG Zemin

The biggest challenge in 1978 was development by any means and at any cost. The direct struggle among internal forces over the opening and the corresponding adjustments were not yet settled and the open door policy had to be handled progressively. Above all, as Deng Xiaoping used to say, it was still necessary to decide on which front the fight would take place against the "flies" entering the open windows of the foreign market, without losing sight of the fact that the name of the game was development, development and more development. China bore in mind the teachings of Sun Tzu to face this challenge: an army that wants to fight a battle throughout an entire territory is doomed to failure; it cannot be strong in everything. Therefore, they launched a policy for each geographic region (Pacific, Central and Western) and decided to allocate greater emphasis and resources to the first region due to its attributes with respect to the Western market. The strategy also enlarged its focus and defined the priority sectors that would receive State support. Thus, the Chinese again adopted the words of Sun Tzu in that, "[t]he place of battle must not be made known to the enemy. If it is not known, then the enemy must prepare to defend many places. If he prepares to defend many places, then the forces will be few in number."¹⁷ In an initial attempt to give a hierarchical structure to the sectors, Deng started from a broad idea called the "Four Modernizations," which included: liberalizing agriculture, attracting foreign investment, implementing an aggressive export policy and creating special zones. Subsequently, in

¹⁷ SUN TZU, *EL ARTE DE LA GUERRA* 52 (Mercado, 1999).

1981, priority sectors were established under the National Program of Science and Technology: agriculture, energy, new materials, computer science, space technology, genetic engineering, physical engineering and laser technology.

This focus on developing fields of priority economic action is very different from Latin America's strategy in general, and the Mexican one in particular. These countries opened their economies and trade in all aspects of their economic chains, losing strength and the concentration of resources in the process. When deciding the battles to be fought, competitive advantage can be gained by concentrating financial, material and human resources in the fields of development selected as the frontrunners of the global competition, keeping in mind that opening all sectors in haste weakens public and private lines of support and disperses State resources and attention. One example of this is the Chinese automotive industry. Designated a priority sector, this industry drew on the State's strengths (subsidies, research, development, education, raw materials, costs, etc.) to become a winning sector, taking it from 200 thousand units in 1995 to over 5 million in 2004 and nearly 10 million by 2010 (CSM WorldWide). This growth logically led to increased vehicle sales (sales increased 75% from 2002 to 2003) and greater growth in its supply chains (in recent years, the demand for steel has grown an average of 20% a year). This policy of preferences has also led to an industrial integration of 70% in the automotive sector; that is, only 30% of foreign supplies is required to produce vehicles. This level of integration is higher in other sectors, such as the electronics, textile and shoe industries, which have gone from 90% to 100%.

By establishing development as the State's comprehensive policy, geographic areas as the wise choice for managing its opening and globalization, and a hierarchical structure of sectors as clear objectives for national growth, Chinese development has gained strategic advantage.

4. The Creation of Special Economic Zones

The birth of Special Economic Areas (SEAs) is the most important event within the opening policy and China's reform and the most evident sign of its change toward the outside world. Through the last shining fifteen years, an enormous amount of information derived from the SEAs, which have been considered a miracle by their great number of observers, has been accumulated.

CHI Fulin

In the late seventies, the Chinese model created different kinds of territories or privileged economic areas to concentrate public support in strategic

points of its territory while providing them with a differential competitive value that could be identified by foreign investment without being tainted by the huge social, economic and productive inequality in the rest of the country. Therefore, it launched a regional development policy that established Special Economic Zones (SEZs) with the highest concentrations of foreign investment. SEZs included: Economic and Technological Development Zones (ETDZ), Free Trade Zones (FTZ), High-Tech Industry Development Zones, Border Economic Cooperation Zones and Export Processing Zones (EPZ). These international competition zones-regions continue to grant all kinds of facilities and support for the entry and exit of products, especially for technology-oriented ones.

From 1978 to 1985, the first five SEZs were set up in the provinces of Guangdong (Shenzhen, Zhuhai, and Shantou), Fujian (Xiamen), and Hainan. By offering a wide range of public stimuli, new undertakings were encouraged in these areas. An extensive promotional campaign targeting foreign entrepreneurs was carried out so they could form joint ventures with Chinese businesses. In this same period, another six Priority Investment Areas were opened and Economic and Technological Development Zones were established in fourteen cities on the eastern coast. With this policy of focusing and concentrating resources, three "Development Triangles" were instituted to accelerate economic growth in the Pearl River Delta. In the 7th Five-Year Plan (1985-1990), the decision was made to enlarge the SEZs and the ETDZs in the coastal region. The 8th Five-Year Plan (1990-1995), devised the modernization of the famous Pudong (Shanghai) District, which received SEZ treatment, boosting its development with the creation of 15 duty-free areas, 54 Economic and Technological Development Zones, and 53 High and New Technology Industry Development Zones. The support policy for capitals and provinces in the interior was expanded at this time to implement a strategy to gradually incorporate the central area into the thriving development of the Pacific coast, which would continue to remain under the special support public policy. Most notably, this special support policy to attract foreign capital was expanded to include the area of the three gorges (Chengdu and Chongqing). Given the success of this strategy, the 10th Five-Year Plan determined the opening of the central and eastern zones (Tibet, Hubei and Mongolia) to FDI. Fishing villages on the east coast and marginalized agricultural towns in the central part of the country have been transformed into global production and technological research cities, in ten to twenty years.

This policy of focusing resources and forming value chains, along with segmenting geographic areas, defining priority sectors and creating special economic areas, has yielded a high level of competitiveness from Chinese producers, who have easily surpassed those from other countries. This concentration of strategic assets can be clearly appreciated in cities like Shang Yang and Nanchong which manufacture around 8 billion pairs of socks a

year; Xiamen, 225 million pairs of jeans; and Suzhou, 300 million of ties. On the other hand, businesses like Hon Hai Precision Industry Co., the main contract exporting company of electronic appliances in the world, are true manufacturing units with nearly 500,000 employees.

The idea of a countrywide boom in such a large territory with an overwhelming marginal population would have led to the failure of any development plan opted for “all together, at the same time” growth. Criticism of the Chinese model’s privileging certain areas at the expense of others overlook this. This development model, which begun on the East Coast for its geographic location and facilities for exporting, has extended over time to the central and western areas. In view of its success, migration from rural areas to urban areas has become a permanent labor phenomenon with the more than 300 million jobs the model had created by 2006. For Deng Xiaoping, economic advancement would be progressive and the wealth and development in the Eastern-Pacific area would spill over to the central and western areas, representing one of today’s greatest challenges to China’s political-economic stability. To guarantee the institutionalization of this policy, the “Law on the Promotion of Development in the Western Area” was passed for the 11th Five-Year Plan of the National People’s Congress. These 50- and 100-year regional government investment strategies have already started by prioritizing 50% of the industrial value of state-owned businesses in 2002 (20% more than in the Eastern Zone), and 53% of their fixed-asset investment for that same year (14% more than in the East). A specialized financial policy for the area (banking, loans, development funds, etc.) has been added, as well as more aggressive social policies.¹⁸

With China’s entry into the World Trade Organization (WTO) in 2001, preferential treatment to the different kinds of strategic zones has been losing the impact given to the first SEZs. Even then, China continues granting SEZs preferential treatment in its public policy, especially seen in the different facilities given to central and western provinces. In an atmosphere of free competition, these facilities rival in their offering of qualified personnel, technical innovation, and a business environment, among others.

On the other hand, international pressure and the institutional commitments signed in this century have made China’s latitude with SEZs more difficult. However, China will clearly not stop using this strategy although with some adjustments along the way. As Jiang Zemin pointed out, “SEZs should be developed during the entire course of the construction of modern socialism,”¹⁹ that is, for at least 100 years. Chi Fulin, one of the main economists and ideologists behind the Chinese model, has also stated that the experience gained from SEZs will be of great help and exemplary impor-

¹⁸ CHI FULIN, *THE THRESHOLD* 178 (Foreign Languages Press, Beijing, 2006).

¹⁹ GAO SHANGYUAN & CHI FULIN, *NEW PROGRESS IN CHINA’S SPECIAL ECONOMIC ZONES* 9, 41 (Foreign Languages Press, Beijing, 1997).

tance in future reforms to the model, which are quickly turning toward a market economy. However, he adds, it will be necessary and even obligatory for the SEZ economic policy to continue as intact as possible.²⁰ The dynamic changes in the Chinese economy unravel within this frame of reference: compliance with international commitments (WTO) and internal advancement toward Rule of Law on one hand, and the challenge of upholding an economic model that has maintained and privileged direct State participation in different economic stages and processes for 30 years on the other. This has given it an edge over competition from other countries, such as those in Latin America that began their extreme withdrawal from State models in 1980. In this State-market challenge, despite China's important legal advancement in economic development, direct State participation in economic processes does not entirely disappear. On the contrary, it continues to steer the model toward the center and west of the country by sustaining SEZs and special policies that motivate and support sustainability in the eastern area and new development in the center and west. Company classifications ("encouraged," "restricted" and "to be eliminated") are still in effect to determine the financial and tax support that allow them to develop and compete internationally. The State continues to hold direct shareholdings in "strategic industrial" sectors (military industry, power generation, petroleum, telecommunications, etc.) and in so-called "basic industry" areas (machinery, automotive, technology, etc.). It also has reduced and slowly "corporatized" their participation in state-owned enterprises (SOEs), or maintained certain prices under State control (approximately 4%), or continued to keep the price of utilities (water, electricity, gas, etc.) below normal to support local or strategic businesses. Furthermore, it has sustained tax rates and development policies for companies in certain geographic regions or sectors that are still considered of national importance, such as those in research and development.²¹ These are only some examples of a China that advances in compliance with its international relations and another China that continues to privilege growth strategies that give added value to economic development, though not entirely in line with global business regulations.

One of the main virtues of the Chinese model is that it changes at all times. Its flexibility and ability to adapt to new challenges place it at the forefront of the world economic scene. The 1980 Chinese model, weighed down with cheap manufacturing, is very different from the model of the 1990s with its intense electronics and technology exports. The 21st century model already shows a very solid outline, both in the strength of its exports and in the emergence of an internal market that did not exist in 1980.

²⁰ CHI FULIN, *PRESSING TASKS OF CHINA'S ECONOMIC TRANSITION* 261 (Foreign Languages Press, Beijing, 1996).

²¹ United States International Trade Commission: *China Description of Selected Government Practices and Policies Affecting Decision-Making in the Economy*, 2007.

Priorities have also undergone changes. The model has now shifted its strategy toward the center and west of the country, combining new and old formulas aimed at giving China more stable and homogenous growth. Both the new Corporate Income Tax Law (2008) and the Contract Labor Law (2008) have further strengthened workers' regulations. Both regulations form part of an economic development reorientation strategy, since the eastern area has started to reach the same levels of tax and work environments as the Western market. By discontinuing some of the attractive tax and labor benefits from the eastern area, companies and investments are encouraged to move to the central and western areas of the country, which are awaiting to take part in China's economic success. This is a significant change since, for example, nearly 80% of the manufacturing companies located in the Pearl River Delta are based on a low-cost business model. With these measures, companies will either survive with low profits, shut down or move to more advantageous areas with cheap labor, as they did 30 years ago in the same Delta region. As to this, the vice-president of the Taiwan Business Association in Dongguan pointed out, "[n]o one wants to leave, but we are forced to move due to the vertiginous growth of costs."²² In spreading out businesses as a result of the adjustments made to the model's inherent strategy (along with a devaluating exchange rate, international pressure from the WTO and the very success of Chinese trade), the Federation of Hong Kong Industries, one of the main participants in the area, estimates that 37% of its 80,000 companies have planned to move some or part of their operations outside the Delta. The Asian Footwear Association says that about 50% of its manufacturing centers will move to interior provinces while 25% have chosen another Asian country and the remaining 25% will wait and see. Authorities anticipate that technology manufacturing plants in the eastern area will prompt the sustainability of cleaner and more advanced industries in the fields of technology or research and development. Bearing in mind the experience and success attained in the Pacific, they expect to reproduce the 1980 and 1990 models in the central and western parts of the country with provisions for investments and more relaxed regulations.

Given its enormous success in China, this policy of preferential customs duties, meticulously applied in the 20th century and selectively applied in the 21st century, has brought about changes in global public tax policies and has even put pressure on tax application strategies in some European countries, which in recent years have seen the advantage of lowering income tax rates to maintain a level of competitiveness to in turn attract international capital. For example, in May 2004, France and Germany decided to reduce their corporate taxes to stimulate employment. In Mexico, global

²² Interchina Insight, *¿Dónde estará el próximo Dongguan?* 3, March 2008, available at: www.interchinaconsulting.com.

competition has compelled it to implement an income tax reduction policy, which went from 35% in 2000 to 28% in 2008. However, both in Europe and in Mexico, the measures applied correspond to a general economic inertia that makes no distinction between sectors, products or regions, as the Chinese model does. In consequence, the effectiveness of the measure decreases its application levels, its focus and its precision.

Since 2001, China has suffered international pressure to stop applying this kind of special support, commonly known as “tax dumping.” Although China passed a new Corporate Income Tax Law in 2008 that already considers to progressively homologate company rates by 25%, this same law still includes a series of special discounts, such as 20% of applicable tax for small businesses with low profits, 15% for high-tech businesses, tax exemption for environmental protection businesses and “lower duties in general,” which is completely discretionary for venture capital businesses in State-motivated investments. Businesses with agricultural projects or in the central and western areas will continue to receive preferential customs duties for both income tax and sales tax, which may be fully extended in these cases (17%) (Annual sales tax evasion in China is estimated at 45% of the total collectible amount).²³

The current strategy of raising China’s Foreign Direct Investment (FDI) is not the same as the one instrumented in the two previous decades. The National Commission for Development and Reform and the 11th Five-Year Plan 2006-2010 have pointed out that the priorities have changed from quantity to quality, giving precedence to high technology, research and development and high added-value sectors, which are advised not to resort to intellectual property rights arguments to frustrate China’s pursuit of innovation; that is, that they be willing to share technology. Services within strategic and national security sectors have been opened up to FDI, closely watching the impact wholly foreign-owned enterprises (WFOE) might have on China’s economic security and particularly on its industry.²⁴

Investments in China’s central, western and northeastern regions are encouraged and an expected 80% of the new FDI is destined to these areas. Foreign investments with low technological content, high natural resource consumption or highly contaminating activities are prohibited.²⁵ In summary, China has gone from giving many facilities in the 1980s and 1990s in the early days of FDI in China (1978, scant FDI records) to a selection program that limits or prohibits unwanted investment and is moving toward a new elitist FDI centered on technological value and the region where it will be used. Despite these limitations, the amounts obtained have not decreased

²³ United States International Trade Commission *supra* note 21, at 67-69.

²⁴ Interchina Insight, *La actitud china hacia la inversión extranjera está cambiando*, November 2006, available at: www.interchinaconsulting.com.

²⁵ *Id.*

with 75 billion dollars recorded for 2007 (World Bank). The recent legal changes in the eastern area, along with new FDI criteria for entry into China, come together in a clear strategic line, demonstrating that after 30 years the “Deng” model with Chinese characteristics is still applied.

5. *Long-Term Vision*

China already knows what it wants for the year 2020 and has a plan to achieve it. According to its Economic Development Plan for 2020, its goals are to quadruple its GDP, grow at an annual rate of 7% and reach a GDP per capita of US\$4,000 to US\$5,000 for roughly 1.5 billion people. It foresees 50% of its exports being made up of high tech goods. Finally, it contemplates implementing an internationalization program to position 50 transnational companies, 500 medium-sized companies and 5,000 SMEs in the world market by the year 2015. In 1953, China began its long-term programs with its 1st Five-Year Plan, drawn up under the guidance of the then Soviet Union and privileging heavy industry and the agricultural sector. To date, China has continued to plan ahead, as evidenced by its 11th Five-Year Program (2006-2010), which stresses the importance and responsibility of civil servants. This program will be evaluated not only on the country's success in economic growth, but also on the progress made in social development, education, environmental protection and job creation. This general and systematic policy of working towards long term goals is enhanced by special plans for specific topics, such as technology, income distribution, poverty reduction, etc., based on the State's development strategy. China has reached the point of planning 50 or 100 years into the future, as in the case of development in the western area.²⁶

The use of time and space is an intrinsic part of Asian culture in general, and to China in particular. Incorporating these variants into the development model and its business strategy has given China a competitive advantage over most developing economies. Most Latin American countries—Mexico included—do not have an economic objective for 2020, just as they lack clear strategies or specific plans to achieve it. There is still a notable absence of planning that lays down a public and private policy derived from each country's strengths and aptitudes that could be successful within the framework of global competition. The only discernible route taken into consideration is generally found in the commitments established at the Millennium Summit for 2015. During this summit, goals to reach for certain rates of human development and social improvement were set. To date, China is the only country that has attained them. In Mexico, however, the

²⁶ ARTURO OROPEZA GARCÍA, CHINA ENTRE EL RETO Y LA OPORTUNIDAD 290 (IIJ-UNAM, 2006).

political power struggle (executive vs. legislative) along with short-term outdated government criteria have brought development expectations to an immediacy that is not compatible with a policy for a project that evolves, like that needed in the technology sector, for example. China already knows which technological products it will incorporate next into its export platform, just as it has already defined what will be produced in given regions or areas of the country and when it should be achieved. Comprehensive long-term vision is a lesson that could be of great use in Latin American public policy.

6. *State-Owned Enterprises*

In 1980, state-owned enterprises (SOEs) made up approximately 99% of China's productive sector, a logical result of a central government. Under its various connotations, this sector had lessened its participation in enterprises to 8% by 2007. Given that it provided 18 million jobs in 2006 its strategic importance in the industrial sector is far from diminishing.²⁷ This important diminution of State ownership, especially in the last two decades, was the result of adopting the new economic model, which coincided with the arrival of foreign capital that gradually replaced state-owned companies. At the same time, the State privatized its public companies locally, mostly from 1990 to 2000, by offering executives and workers from medium and small enterprises the facility to acquire these companies.

The strategy the Chinese State implemented has followed a gradualist policy since its inception. Hence, it has privileged privatization, activities that produce increased exports or yield an apprenticeship in technology or some other area that gives added value over non-strategic sectors. Within this process, the State always assumed the role of referee for the different interests involved and balanced out privatization, foreign investment, strategic sectors and the strength of the development model. In contrast, there was no gradualism in Latin America and Mexico. On the contrary, most Latin American countries established a competition to see who could liquidate their public assets first. The different results of the two strategies are obvious. China emerges as a modern State with considerable economic power and large public enterprises, in addition to a private sector that has been converted into the basic force behind exports, technological change and the implementation of best management practices. In other words, by privatizing and opening up to trade, China consolidated a growth strategy that has positioned it today as one of the most successful countries, setting the pace and new paradigms for the entire world.

²⁷ CHINA STATISTICAL YEAR BOOK 520 (2007).

Latin America in general displays weak states in terms of its industrial chain, having lost important public assets whose proceeds were used for dead-end developmentalism or an increase in current spending. Between 1990 and 2000, most Latin American countries handled their privatization processes anarchically, without any strategic orientation that would allow them to select the goods to be privatized beforehand based on a long-term development plan that would strengthen their economic model. Although there are a few exceptions like the oil and electric industry in Mexico, the sale of public assets, which included industrial, banking, services, or electric industry companies, transpired under a formula of international demand and not a systematic offer from the State (a process that was not exempt from acts of corruption). Unlike China, State privatization in Latin America did not promote the political or economic growth of the participants. On the contrary, because of its deficient implementation, Latin American nations are now less able to fulfill the task of promoting economic growth, social development and the preservation of public order.

Privatizing millions of enterprises or going from a central planning economy to a mixed market economy has not been easy for China. The State has confronted many problems and contradictions during the process of implementing “Market Socialism” without any historical reference at all. Which enterprises are non-strategic? How can national interest be safeguarded? How are the resulting monopolies to be administrated? How can corruption be prevented? How can a SOE legally be on the same level as a private enterprise? How can local SOEs be transformed without resistance from the provinces?

Today, the process is far along, but it is a long way off from the finish line. To begin with, a countless number of company categories still exist in China. However, according to Ministry of Industry and Commerce statistics, in 2006, there were already close to 5 million private enterprises in the various categories employing 52 million people, which represents 57% of the companies in the country. Despite the importance of privatizing, the Chinese strategy clearly indicates that progress made in the market economy or in the privatization of its assets is secondary to national economic interest. For example, the 2007 assessment report on the reforms carried out by China indicates that, “...experience has shown that in the context of economic globalization, a passive resistance to foreign investments turns out to be counter-productive...” adding that, “in the current situation, the excessive relaxation as far as an irrational placement of the State’s assets in the productive sectors should be halted,”²⁸ to such a degree that, even with privatization, State-owned enterprises continue to have very strong participation in strategic sectors, such as gas and oil, where the State controls al-

²⁸ 2007 EVALUATION REPORT ON CHINA’S REFORM 83 (Chi Fulin ed., Foreign Languages Press, Beijing, 2007).

most 100% of the area, 100% of the basic telecommunications services, 55% of electric energy generation, 82% of civil aviation, 89% of water, 50% of automotive production, 60% of the steel industry, 70% of the hydroelectric industry, etc. At the same time, SOEs have increased productivity over time, quickly adapting to more intense free market competition, drastically increasing its annual profits from 1.46 trillion Yuan in 1998, to 19.50 trillion Yuan in 2006.²⁹

7. *Industrial Policy*

The strategy of low prices on finished industrial products within the Chinese domestic market inevitably has been spread to the international market. This can provoke phenomena associated with the current industrialization stage in China, such as anti-dumping lawsuits, a large-scale trade surplus, reevaluation pressures for the RMB (Ren Min Bi, currency of the People's Republic of China), as well as a hollowing out of the industry in some developed countries and neighboring countries as a result of the industrial transference. Fundamentally, these phenomena turn out to be imbalances in the economic trade relations, caused by the irrationality of the world economic order. They are also manifestations of the competitiveness of the Chinese finished industrial products, which have been moderated by the market competition between the 'good and the cheap.'³⁰

In 1978, internal credit in China's State banking sector represented 51% of the GDP. In 1985, it rose to 67%; in 1990, to 87%; and to more than 100% in 2000. Although the significant increase in these flows put an end to most of the corruption that had arisen from granting loans arbitrarily and fraudulently, its main aim was to transform an obese, inefficient industrial sector. The goal was fully reached when its participation in the economy rose from 40% to 50% over a period of twenty years. However, what was more important was the financial facilitation of the cost of its learning period, and later that of its industrial reconversion period and the development of a modern, efficient platform of goods and capital that today sustains the priority sectors. Such is the case of the automotive sector, in which 50% of the machines and numerical control instruments used in these factories are already produced by Chinese companies. In addition to preferential, there was also a tariff subsidy and duty-free benefit strategy that opened up machinery and capital goods imports exempt from any payment whatsoever to cover part of the learning stage. To date, the machinery for high technology sectors or priority sectors are still exempt from import tariffs or

²⁹ Jin Bei & Li Gang, *Chinese Industrial Enterprises*, in CHINA ECONOMIST 55 (2008).

³⁰ JIN BEI, THE INDUSTRIAL COMPETITIVENESS OF CHINESE INDUSTRY 32 (Foreign Languages Press, Beijing, 2007).

restraints. Moreover, strategic industrial lines were backed by monopoly policies in the internal market and access to international financial markets were established. SOEs were given priority treatment in the metallurgic, transportation equipment and chemical industry sectors, as was foreign investment in textile and manufacturing, electronics and telecommunications exports with the opening of the market.

When one speaks of the “world factory,” one thinks of the 30 or 50 cents on the dollar per hour paid to the Chinese workforce. Although this cost is a strength (both for China and all developing economies), a comprehensive public strategy that transforms a weak manufacturing position into an internationally competitive productive activity is required to make it possible for this workforce to give added value. This change can be clearly seen in the composition of the Chinese industrial sector, in which manufacturing-assembly lines went from representing 90% of it in 1978 to 70% in 2002, despite a significant increase in the industrial sector’s GDP for the same period. Just as in-bond assembly and the agricultural sector lived through the Asian development boom, the trade surplus generated by mature 100% Chinese manufacturing branches, such as the textile and clothing, toy, sports, footwear and furniture industries currently provides for the new technological sectors that have yet to generate surplus balances, such as electronic, medical-surgical, electrical material and photographic equipment sectors, etc., or lack supplies like fuels, minerals or steel.³¹

Industrial policies in China and Latin America (including Mexico) have followed different patterns. With mercantilist pragmatism, the Chinese model first focused on opening by exporting manufactured goods made by its ample workforce and then went on to flexible specialization with strong state investment. This led to setting up labor intensive industries such as textiles, clothing and electronics, and later moving on to heavy industries (steel, petrochemistry, vehicles, aeronautics) and now to high technology. This process was accompanied by a strong boost to infrastructure for development and important resources in innovation and technological development with high rates of internal savings and investment. This model followed a gradual and progressive path that made it possible for them to learn from their own experiences.

The Latin American industrial model, however, came about with an almost complete trade opening without possessing the experience to administrate it properly, and with an extreme lack of State involvement. This left the national production chain at the mercy of free market forces. Jin Bei points out that “[t]he most powerful driver of the market economy is competition, which generates efficiency, promotes growth, and creates well-being.” However, he adds,

³¹ Oropeza, *supra* note 26, at 308.

[t]his market mechanism does not intrinsically have the ability to reach balance, security, and automatic innovation, and it is not in itself a mechanism that distributes the fruits of industrialization to all its participants. On the contrary, the competition of an imperfect market will always generate great disparities, even chaos, crisis, and polarization, creating an undesirable situation that is contrary to the accepted human values and that goes against long-term national interest and its basic values...

Which is why, “[i]n summary, the industrial development strategy of a country will always be based on rational and national factors that include factors such as nationalism, ethics, and many other cultural values.”³² National interest is precisely what some Latin American countries have lost on their way to the free market. It is also marks the big difference with the Chinese model, which is based on the basic principle of regarding national interest as a priority. Therefore, China has always been on the side of its companies and industrial projects in both its internal market where it has successfully increased the production of products selected every five years and in its external market where its participation in world exports was only 0.8%, in 1980 but reached 5.3% by 2001 to be surpassed in 2007 with 6%.

INDUSTRIAL GROWTH (1978-2006)

<i>Industrial Product</i>	<i>1978 Production</i>	<i>2006 Production</i>	<i>Industrial Product</i>	<i>1978 Production</i>	<i>2006 Production</i>
Automobiles	0	3.8 million	Chemical Fibers	280 thousand tons.	20.7 million tons.
Washers	0.04	35.6 million	Beer	400 thousand liters	35 million liters
Refrigerators	2.8	35.3 million	Water Energy (100 million KHW)	4.4 million	43.5 million
Air Conditioners	0.02	68.4 million	Paper	4.3 million tons.	68.6 million tons.
Cellular Phones	0.0	480 million	Sulfuric Acid	6.6 million tons.	50.3 million tons.
Micro computers	0.0	933 million	Chemical Fertilizers	8.6 million tons.	53.4 million tons.
Clothing	1.1	5.9 million	Ethylene	380 thousand tons.	9.4 million tons.

³² JIN BEI, THE INDUSTRIAL COMPETITIVENESS OF CHINESE INDUSTRY 155 (Foreign Languages Press, Beijing, 2007).

INDUSTRIAL GROWTH (1978-2006)
(continuation...)

<i>Industrial Product</i>	<i>1978 Production</i>	<i>2006 Production</i>	<i>Industrial Product</i>	<i>1978 Production</i>	<i>2006 Production</i>
Color TV	0.38	83 million	Cement	65.2 million tons.	1236.7 million tons.
Tractors	110 thousand units	190 thousand units	Crude Iron	31.7 million tons.	419.1 million tons.
Motor Vehicles	140 thousand units	7.2 million	Pig Iron	34.7 million tons.	412.4 million tons.

SOURCE: CHINA STATISTICS YEARBOOK 2007.

In the last 30 years, China has never stopped its industrial process nor has it allowed it to eliminate its weak and inefficient industry of 1978 in the interests of a “free market.” On the contrary, by using the free market, it has established continuous improvement and strengthened the greater part of its manufacturing sector. As Meza Lora points out,

[t]he convergence of the market and the State in the industrial sector in China is an expression of an unquestionable fact: recognition that the rules of the game should be governed by the market and the necessary State intervention given the weakness of this Institution. A socialist market economy with Chinese characteristics does not assume the antagonism between the State and the market. On the contrary, it understands that the market and the State can play a complementary role in industrial coordination activities. If the market is deficient in solving coordination problems, an explicit industrial policy is justified as a coordination mechanism *ex ante* that does not come from the market.³³

Within this general framework of joint State-market work, the following actions that the Chinese government has implemented in its industrial policy stand out:

- Direct investment in infrastructure projects; financial and budgetary assistance in projects from regions lagging behind.
- Administrative intervention from the central authority in its enterprises to conclude and establish joint ventures, mergers, etc.

³³ JOSÉ SALVADOR MEZA LORA, EL ROL DE LAS INSTITUCIONES CON LAS GRANDES TRANSFORMACIONES DEL SECTOR INDUSTRIAL EN CHINA DURANTE LA REFORMA ECONÓMICA 285 (Porrúa, 2006).

- Price control over basic supplies (for example, energy and water supply).
- Direct and long-term financing for key companies; preferential capital allocation to companies by way of the capital market, especially for new companies or those seeking to increase their technological development.
- Tariffs and duty-free measures, import quotas, licenses and local restraints on imports.
- The prohibition for foreign companies to distribute products not produced in China or for controlling their own distribution networks.
- Low interest rates in State banks and selective loans to different industries.
- Tax incentives to companies oriented toward industry.
- Reduced tax rates for high-tech companies in the field of industrial technological development.
- Zero taxes for companies of “urgent need for the State” (fixed capital investments for agriculture, water conservation, transportation, postal service, telecommunications, certain medical projects and machinery and electronics, etc.).
- State enactment of a Direct Foreign Investment Guide that specifies the projects that are encouraged, allowed, restricted and prohibited, etc.³⁴

8. Research and Development as Part of State Policy

With a research and development budget of more than 60 billion dollars for 2006 and a staff of 3.2 million people (2 million of which are scientists or engineers), China is growing in this sector (Jian Bei, 2007). Since the 1st Five-Year Plan (1953), technological development had been included, but its market focus was not emphasized until the 6th Five-Year Plan (1979), in which interest was unmistakably centered on technological growth by means of research and development. In the late 1970s, a planning system for science and technology activities was drawn up and technological innovations were implemented in public enterprises to increase productivity while federal research centers were established in different parts of the country. With the 7th Five-Year Plan, a policy to reform the research and development centers (RDC) was adopted, focusing on responding to market requirements and not adhering to obsolete or bureaucratic outlines. At the same time, manufacturing enterprise and RDC mergers intensified to achieve improvements in technology or in-line production. By adding business incubator programs to this cluster, it has been possible to improve productivity based on new technological developments. Furthermore, it has sup-

³⁴ *Id.* at 229.

ported the creation of new technology enterprises (NTEs), as well as patents in science and technology.

During the 1990s, covered by the 8th and 9th Five-Year Plans, RDC operations were reviewed again for ways of improving performance. To better compete and better motivate research personnel, the possibility of registering science and technology patents was instituted so the centers could financially benefit from the commercial rights to these patents, which would be bought by the market. One notable aspect of the Chinese government's efforts in this field is that its strategy was not handled as an independent public activity, but directly aligned with the market, education, special areas and strategic sectors, in addition to the other policies aimed at development and public spending to obtain seeking maximum productivity. In the 10th Five-Year Plan (2000-2005), new technologies and so-called third generation products were given a boost by making research and development one of the most important issues in plan. This field was deemed so important that the outline was reproduced in the 11th Program (2006-2010) and the 2020 Development Plan. In the year 2000, the research and development budget was significantly increased to 1% of the GDP —about 100% the previous amount— over a 10-year period (World Bank). This percentage currently exceeds 1.4% of the GDP.³⁵

There are approximately 700 federal and provincial institutions that comply with the requirements to be considered as RDC. In most cases, a RDC consists of state-of-the-art installations with the best quality equipment in the world that offers all kinds of services to public and mixed companies. One example of technological development with comprehensive management is Zhangjiang Hi-tech Park in the Shanghai area. This park has a surface area of 25 km² and houses around 50 RDCs that serve both the public and mixed companies. These parks operate under a cluster-type head office through which the entire technological development value chain interacts: RDCs, companies, educational centers and incubation programs from new production projects. Around 3,168 companies coexist with the 50 centers, as well as countless specialized educational centers that provide the experts needed for development (to date, this cluster is working on approximately 400 research projects). This productive research and development park in Shanghai has attracted investments of approximately ten billion dollars to date, 70% of which corresponds to foreign investment (Beijing Investment, 2005). This model of “intelligence” centers has also registered approximately 3,000 patents.

The work China does in research and development is a central part of a strategic policy that sees development based on market reality as its main objective. However, in innovating itself, China is very much aware that its greatest strength —and its greatest weakness— is its enormous supply of

³⁵ Oropeza, *supra* note 26, at 310-311.

work. Thus, while competitiveness and innovation has improved in certain high-tech sectors, its challenge is still that of maintaining large factories with an intense workforce in other areas of manufactured goods (heavy industry, for example, employs almost 80 million people) with reasonable technological improvements in terms of efficiency. China cannot afford the luxury of generalizing the use of robotics, for instance, because it would cause social imbalance in its workforce. Despite this, growth in research and development is a priority for the Chinese model. Since 1985, it has registered 14,000 patents, a number that was surpassed in 2003 with 300,000 registrations, placing it in third place worldwide after Japan and Germany. From 1995 to 2003, it has sustained an average annual growth in the high-tech industry of approximately 20%, which represents 18% of the national industry (Jin Bei, 2007).

III. THE LAW AS LEVERAGE FOR DEVELOPMENT

Although the history of China is one of the oldest in the world (approximately 5,000 years old), it should be pointed out that in legal matters, the Asian country finds itself in the process of establishing Rule of Law, after going through a difficult and abrupt transformation of its feudal legal system that has taken 170 years. Therefore, one of the new facets of the Chinese phenomenon—and one of the least known in the world and especially in Latin America and Mexico—is that of understanding its current legal system.

Latin America already trades more than 100 billion dollars with China (2007), more than 30% of which corresponds to Mexico. However, in either case, there is not even a minimal amount of legal bibliography today that can legally lead and guide the exponential growth of the political-trade relationship with our new Asian partner, or that responds to questions on the history or precedents of the Chinese legal order. Even then, law in China is as old as its history, which, due to its volume, is difficult to summarize.

1. *Brief Overview of the Legal Order in Chinese History*

The exact dates and origins of Chinese culture varies, but some authors (Cornejo, 2007) place the emergence of their writing in the Shang period, between 1751 and 1122 B.C. However, most researchers agree that in 221 B.C., the first unified State in the history of China is established under the command of Quin Shi Huang Di, the first emperor of the Quin Dynasty.³⁶

³⁶ ARTURO OROPEZA GARCÍA, CHINA-LATINOAMÉRICA: UNA VISIÓN SOBRE EL NUEVO PAPEL DE CHINA EN LA REGIÓN 13 (IIJ-UNAM, 2008).

As to the historical background of its legal system, some authors (Xin Chunying, Li Lin, etc.) speak of its birth during the Xia Dynasty (21st century B.C.) and of later growth of written law between 770 and 221 B.C. Unlike other legal systems of the time, Chinese law was characterized from the start by having a secular influence because it was directly related to the power of the ruling governors more than with divine figures and it was understood that law was “[t]he rules of the natural order of things.” The origins of Chinese law were also linked to the philosophical schools of thought of the time, such as Confucianism (551-479 B.C.). The three cardinal rules of this philosophy, which strongly influenced Chinese law—and to a certain extent, continue to influence social order in China—are: *a*) harmony between the subject and the monarch, *b*) harmony of the father over his son and *c*) harmony of the husband over his wife. For them to be carried out properly, these tenets were to be based on five basic virtues: kindness, rectitude, decorum, wisdom and sincerity. These principles would become the basis for the legal system of China’s feudal society.³⁷

“Let the ruler rule as he should and the minister be a minister as he should. Let the father act as a father should and the son act as a son should” is the Confucian premise of a social order that should start from the responsibility of its members and from a pre-established order that assigned each person his place and obligations. Breaching this order would lead to a disastrous loss of his face and self-esteem for which one remedy was suicide.³⁸ This philosophical line tended to keep the *status quo* by means of the proper or virtuous behavior of the different participants or social status that made up the Chinese feudal organization.

The concept of law in China was different from the Western one. Its perception of obligations and rights was not derived from a “Superior Law,” but from the natural order of things; from a “harmonious society” that was ruled by the emperor’s or the ruler’s “wisdom.” Hence, the first legal regulations were based on a social “should be” backed by a generalized concept of “decorum.” These principles emerged from philosophers like Confucius and Lao Tze whose rules served to legislate a common code of conduct in which legal provisions were an expression of this natural order.

Given the ruler’s hegemony, the most visible legal expression was that which corresponded to punitive law, which regulated and punished any breach in the established order, in addition to any resulting social disgrace. Just as corporal punishments were doled out, so were exile and death. Torture, in this scenario, was expected and accepted. Enforcing the law was entirely in the hands of the monarch, as was mediation since the legal profes-

³⁷ XIN CHUNYING, CHINESE LEGAL SYSTEM & CURRENT LEGAL REFORM 311 (Beijing: KAS-Occasional Papers, 1999).

³⁸ JOHN KING FAIRBANK, CHINA: UNA NUEVA HISTORIA 78 (Andrés Bello, 1992).

sion did not exist in China. As to the codification of this legal standard, Fairbank points out, “[b]y pre-modern standards, Chinese legal codes were monuments of their kind. The great Tang code of the 8th century and its successors in the Song, Yuan, Ming, and Qing periods, still invite analysis. Early European observers were well impressed with Chinese justice.”³⁹

This general outlook of imperial law, or feudal law, remained practically unchanged until mid-19th century when China’s direct contact with certain Western powers forced it to revise and begin some transformations in certain areas. China was once the greatest civilization in the world. Even from the 10th to the 15th century, Europe could not be put on the same level as the Chinese Empire in terms of agricultural productivity, industrial ability, commercial complexity, urban wealth or standard of living (not to mention bureaucratic sophistication or cultural achievements).

For over 1,000 years, its economy was the largest in the world, representing 30% global participation. However, from the 16th century on, and compared to other legal systems, Chinese law was characterized by not having a modern legal system in tune with the development of the economies and democracies of the time, which were beginning to display solid legal evolution.⁴⁰ In contrast, from the 17th century onward, China entered a stage known as the Late Empire (1600-1911), which accelerated in the 18th and 19th centuries.

The various internal rebellions that took place in China in the 18th and 19th centuries, directly incited the transformation of the established order, which despite its different stages and challenges, had been able to preserve its main characteristics for around two millennia. Because of these rebellions and foreign invasions that clearly revealed the weakness of an empire in decline and its inability to control its territory, a change in the legal framework also occurs, prompted by the presence of new participants in China’s public life. For example, the period between 1842 and 1943 has been called “[t]he century of treaties” (Great Britain in 1842, the United States and France in 1844, Russia in 1858, etc.). During this period, the maritime powers of the time obligated China to recognize certain rights within the economic and commercial order that overturned the established legal order and the Empire’s central concept: that of exercising power and full sovereignty within its walls. Under hegemonic pressure and with the signing of these treaties, China first had to accept the equal standing of other countries (Great Britain, France), which was a severe blow to the Emperor’s principle of superiority over other governors and thwarted his right to demand tribute and obedience. China also had to recognize the jurisdiction of other countries within its territory, which had to include the “[m]ost

³⁹ *Id.* at 225.

⁴⁰ Chunying, *supra* note 37, at 314.

favoured nation” clause and free trade for these powers within Chinese borders.⁴¹

The meeting of a declining empire with maritime powers in full expansion provoked the forced opening of the Chinese Empire. This in turn gave rise to the transformation of its established political, economic and social order, as well as its legal order. This first discussion on legal order in China was mainly focused on drafting a Constitution as the starting point for a new legal system, which for the first time would include: a division of power system, an open (oral) justice mechanism, new regulations on foreign trade and the separation of civil and criminal law, among others. However, the interests of the time were such that in the first attempt (1898), Dowager Empress Tza-hsi opposed, incarcerated and sentenced six of the reformers to death. In the second attempt (1905), a bomb exploded on the train taking a group of experts chosen to study constitutional projects in other countries (Germany, Japan, etc.).⁴²

Qing Dynasty rule came to an end in 1912, thereby concluding a lengthy and historic stage for the Chinese Empire. At times, it had tried to open up to the possibility of a new constitutional system, to remain in power and reduce pressure from foreign powers. After more than two millennia of maintaining an established order by and large (aside from the challenges from the Mongol conquest of 1279 and other foreign interferences), the constitutional reform project was not without its challenges. On the one hand, the group of new legal order sympathizers wanted their prerogatives to be recognized within a Rule of Law framework, which would also give the country a modern platform from which it could achieve financial success, as in the case of Japan (Meiji Dynasty). On the other hand, conservatives stated that the Chinese people had not asked for a Constitution; it was not a part of their culture and they were not ready to abide by it. Thus, it could give way to uprisings if not implemented properly. Amid these struggles, the interim of the Nanjing Chinese Republic government brought the prior feudal system to an end in January 1912. In March 1912, the temporary leadership of the new Republic of China adopted a political Constitution for the first time. Although temporary in nature (1912-1914), it proposed a division of powers system, sovereignty of the power of the people and an initial list of citizen’s rights. It spoke of a temporary presidency, a Supreme Court of Justice and another set of powers, setting a precedent and becoming a milestone in the country’s legal context.⁴³ The first year of leadership under Yuan Shi Kai (1914), ushered in a Chinese legal system defined by a revolutionary vortex that did not stabilize until 1949 with the victory of the Chinese Communist Party.

⁴¹ Fairbank, *supra* note 38, at 245-248.

⁴² Chunying, *supra* note 37, at 315-317.

⁴³ *Id.* at 323.

2. Chinese Law 1949-1978

After a long period of political change that stalled the nation's financial progress, China set out on the road to reconstruction, moving from an imperial model, which was feudal in nature, to a communist government, which was totalitarian in nature.⁴⁴ In the imperial model, the ruler and a social order based on philosophic principles usually regulated the judicial relationship between the Emperor and his subjects. Due to this preconceived order, the vertical balance of its social ties gave direction and meaning to the relationships of rights and obligations. Therefore, the transition from a ruler's vertical order to that of the Party did not represent a fundamental change in China's legal system.

China's legal system after the CCP's victory in 1949 can be analyzed from various angles: political, financial, or strictly legal, among others. As with all cultural output, law in China has a good amount of all three elements, which have asymmetrically come together over the last seventy years.

From a political point of view, China's legal system can be divided into two distinct periods. The first spans from the Mao Zedong era (1949 to 1976) and the second goes from 1978, the year opening and political reform began under Deng Xiaoping, to the present day. During the first period, the new legal system repeated the post-imperial transition phase's practice of abolishing all forms of legal legacy.⁴⁵ All kinds of legal provisions that might have been created by the opposing Kuomintang (KMT) faction were repealed to give way to a new legal system guided by the aims and objectives of a Communist and totalitarian State which, based on its own idiosyncrasy, did not require a horizontal system to regulate relationships other than those between the State and proletariat. Guiguo Wang points out that during this period, and especially during the Cultural Revolution (1966 to 1976), law was not deemed a necessary instrument and had no significant relevance within China's new social order.⁴⁶

Regarding this time period, Li Lin points out,

[t]he establishment of the People's Republic of China in 1949 gave birth to a new era in China's legal makeup. The time period from 1949 to mid-1950 was the initial stage, during which China enacted the National Committee of the Chinese People's Political Consultative Conference, as well as other laws and decrees that played an important role in the consolidation of the new State, establishing the new social order and a revival of the national economy. The Constitution of the People's Republic of China, adopted at

⁴⁴ ARTURO OROPEZA GARCÍA, CHINA ENTRE EL RETO Y LA OPORTUNIDAD 19 (IIJ-UNAM, 2006).

⁴⁵ Chunying, *supra* note 37, at 327.

⁴⁶ Guiguo Wang, *Evolution of the Chinese Legal System in the Globalized World*, in DERECHO COMPARADO ASIA-MÉXICO 98 (José María Serna de la Garza ed., IIJ-UNAM, 2007).

the first session of the National People's Congress, and other related laws, defined China's political and economic system, as well as the rights and freedoms of citizens. They imposed the standardization of organizational structures, the functions and powers of the State's governing body; and established the basic principles for the Chinese legal system, which provided the preliminary foundations for the Chinese legal structure. However, after the mid-fifties, and especially during the 10 years of the Cultural Revolution (1966-1976), the Chinese legal system was severely destroyed.⁴⁷

Though marked by scant legal production (marriage laws and agricultural reform in 1950), this important political stage was noted for adopting the first formal, permanent constitution in China's history in 1954. Clearly done under Soviet influence, this established the basis for a State property system and centralized management, which guided the legal system of the Maoist era by means of administrative provisions. Within this timeframe, a second Constitution was enacted in 1975.

During the almost thirty years of Maoist rule and throughout the various stages of the Great Leap Forward (GLF) or the Cultural Revolution (CR), China was unable to consolidate a political model that would contribute to the social and financial advancement of its inhabitants. Its various development strategies never attained results that would at least satisfy the basic needs of food and clothing for an average 700 million people at that time. This situation led to the solidification of the political and legal model, which awarded greater power to the State and its vertical decisions, to the detriment of the progress made towards establishing a law aimed at regulating the State or its relationship with its people. In choosing a political and economic model closed to the outside world, norms that were compatible with external participants were not an integral part of the agenda of the nation that withdrew from the then General Agreement on Tariffs and Trade (GATT) immediately after the victory of the 1949 Revolution. Nor did it resume its institutional project for opening up to the outside world until October 25, 1971, when China was once again admitted into the United Nations (UN) after having been expelled in the early 1950s.

3. *Chinese Law 1978-2008*

Unlike the first stage, the second political period led by Deng Xiaoping is characterized by its economic and political openness toward the Western world, heralding a new era in China's relationship with the world and in consequence, the construction of a new legal system. This period was born

⁴⁷ Li Lin, *Historia del derecho chino y su sistema jurídico contemporáneo*, in MÉXICO-CHINA. CULTURAS Y SISTEMAS JURÍDICOS COMPARADOS (Arturo Oropeza García ed., IJ-UNAM, 2008).

of the political decision to open China up to the world. During this time, legal matters can be summarized into the enactment of two Constitutions, four constitutional reforms, 229 general laws, 600 administrative regulations, 7,000 local regulations, and more than 600 autonomous regulations. This body of law spans over three decades and is greater than what China had produced in 5,000 years of history. This period is also noted for organizing its political stability, financial project and legal system around the centralized and prioritized objective of development. With this in mind, legal production in China over those thirty years was mainly aimed at channeling the economic opening of the State and reinforcing the agreements made with the outside world.

In 1978, China was practically bankrupt, with close to 70% of its population living in extreme poverty and with signs of recent famine that had caused millions of deaths. Since looking to the recent past would not clarify the situation, hunger and poverty were reasons enough to look outside China for new answers that would provide the necessary economic development for a nation of close to 700 million poor people. With this in mind, the 1978 Constitution came into being amid much political debate between the new reformers and the still very strong conservatives. This Constitution provided the background for the first economic changes in the nation, as set forth in Article 11, which highlights the importance of economic development.

The 1978 Constitution had the merit of ratifying the principles of the Chinese Revolution and sent a reassuring message to a country alert to future changes. However, a new Political Constitution was enacted on December 4, 1982. In contrast to the 1978 Constitution, the one from 1982 significantly changed the direction of the Chinese model. However, the legal and economic change that most stands out in this statute and outlines the opening of the new Chinese Development Model is found in Article 18, which states:

Article 18. The People's Republic of China permits foreign enterprises and other foreign economic organizations and individual foreigners to invest in China and to enter into various forms of economic cooperation with Chinese enterprises and other economic organizations in accordance with the law of the People's Republic of China...

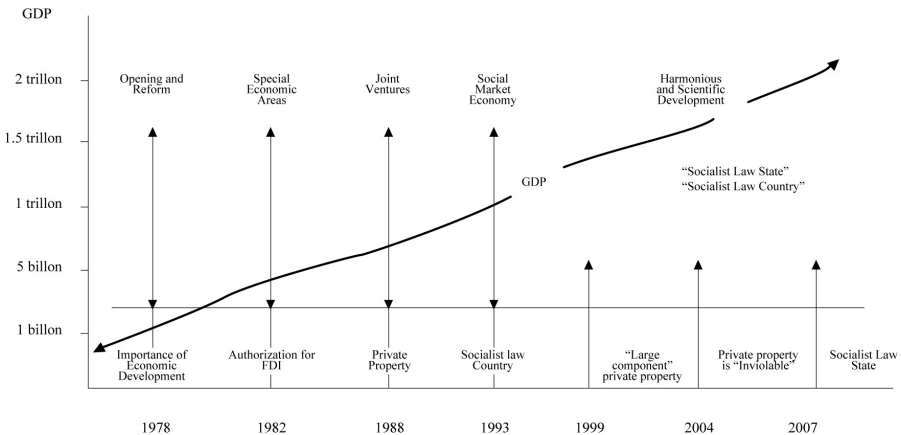
For the first time in its history, Article 11, as amended in 1988 recognizes the existence of a private sector of the economy, a significant step toward a new "market socialism."

Article 11 (4th Par.). The State permits the private sector of the economy to exist and develop within the limits prescribed by law. The private sector of the economy is a complement to the socialist public economy. The State protects the lawful rights and interests of the private sector of the economy

and exercises guidance, supervision and control over the private sector of the economy.

The Constitutions of 1982 and its amendment in 1988 represent a genuine watershed in China's economic, political, social and legal life. They also began to reflect the initial layout of a new project that continues developing to this day. Deng Xiaoping had already anticipated the construction of an economic model with "Chinese characteristics" that would include a free market since 1979. It was established in the 11th Central Committee of the Communist Party of China in December 1978, which initiated the project for reforms and China's opening. The first proposal for the creation of special economic zones was made in 1980 and was designed for them to incorporate foreign direct investment; hence, the important constitutional reforms of 1982. Following up on this, the concept of market price was introduced in 1981 and by 1984 economic reform began to spread throughout the country. That same year, the 12th Central Committee of the Communist Party of China issued the "Decision Concerning Reform of the Economic Structure" to facilitate the application of the law and the new development of the socialist economy.

The year 1992 holds special significance for the dynamics of the legal changes defined by the vision and advancement of the economic project since it represents the first amalgamation of political opening-up and economic reform. This was reflected in the 14th CCP National Congress, which officially declared a "Socialist Market Economy" a priority and consequently, the importance of constructing a legal system for this model.



SOURCE: The Author.

Four years after the events in Tiananmen Square and fifteen years after its opening-up, the second amendment of March 1993 marked the end of the transition period from the centralized planning system of 1949 to the

new socialist market model. Thus, this amendment was a political message to the nation by reaffirming China's new path, as well as one to the rest of the world by legally making public measures that would convey certainty and reliability to foreign investors official. Nevertheless, Article 7, according to the second amendment, reiterates the State's role as the leading force for the growth of State economy and defines its development strategy by pointing out that "[t]he State has put into practice a socialist market economy" (Article 15). The 1999 amendment further reiterates the constitutional message of 1993 and part of the new China's progress toward the "Rule of Law." Therefore, Article 5 institutionalizes the Rule of Law as a commitment, and as a result, the need to build a socialist rule of law while respecting foreign relations and private property, already described as a "great component" of the country's economy. Within this context of economic determinism in the new legal order, the 2004 amendment reached a stage of marked prosperity and the undeniable economic success of its development model. Therefore, changes were focused more on social and political issues than on economic ones. Notable economic milestones include defining its citizens' private property as "inviolable" and the prevision of "non-public economies" (Article 11), clear signs of the consolidation of private property in China.

Over the last thirty years, China has developed its own legal production with Chinese characteristics, centered on lending assistance for national development without being dependent on foreign pressures or interests. A Chinese-Foreign Equity Joint Venture Law was passed in 1979 and the Foreign Capital Enterprises Law was published in 1986. The first Corporate Law in China for the Regulation of New Foreign Companies was enacted after the second constitutional amendment in 1993, although the Private Sector Corporate Law did not appear until the year 2000.

Another clear example of modulating the legislative speed to the economic priorities of the development model has been China's trade and labor legislation. In terms of trade legislation, although China embarked on an ambitious export project that took its international trade ranking from the 27th place in 1978 to third in 2004 (China Today), it legislated its first international commerce law three years after its entrance into the WTO. As to labor, China regulated a far-reaching tolerance policy toward new foreign capital companies in the 1980s, but it was not until 1995 that it passed its first labor law. While this law does summarize some workers' rights, it is still a body of laws of a discretionary nature that favors employers. With the successful economic development of the Pacific region, a new labor law went into effect in 2008. In addition to granting workers more effective rights, it paved the way for a massive transfer from work centers to less developed areas in the country, as stipulated in the dialectic vision of the development model. In view of all this, it can be said that to date, new legal production in China has always been done in direct correlation with its economic

model, complementing it as a tool that encourages growth without hindering it.

China's legal model was practically non-existent in 1949. Since then, it has gone far in establishing its own provisions. As Huang Lie points out, "China entered a new era after the foundation of the People's Republic of China, but the construction of the legal system went on a very tortuous path. The disaster of the cultural revolution completely destroyed its legal institutions." Huang goes on to stress that

[f]or a long time, some of China's leaders and cadres have placed their hope of durable peace and prosperity of the nation upon a few good leaders, and have failed to understand that the law and its institutions are the crux of the matter. This has been a major obstacle to the development of democracy and the legal system in China. Furthermore, the existence of power operating above the law is another indication that China's legal system is far from perfect. The law is sometimes displaced by power; the leaders' words sometimes substitute the law in the management of governmental affairs. When we promote rule of law and oppose rule of man, we are trying to confront these problems directly.⁴⁸

Consequently, China cannot now speak of finished judicial systematics, nor can it be described as a socialist legal system. China's new legal system, which is currently under construction, finds itself between a totalitarian-style political system and an economic model deeply rooted in the free market system. Therefore, the current legal panorama has the appearance of a hybrid setup with "Chinese characteristics," and only time will tell how it will decipher the various lines of its development with greater clarity. In spite of this, throughout this lengthy period of guiding and backing its economic priorities while preserving the Party's central omnipresent power, China has had to include legal influences from both socialist and Common Law traditions, as well as from Civil Law, in its juridical model, due to its need to have dealings with the Western world:

[After the reforms], Chinese laws underwent tremendous changes. The main trend has been to massively absorb foreign legislation, including legislative intent, legal concepts, and legal values. Obviously, these laws bore the influence of the common law system, possibly as a result of the large influx of Chinese scholars into countries and regions like the United States, Canada, Australia and Hong Kong. This does not mean, however, that China abandoned its own legal tradition entirely, as Chinese law has frequently studied and copied laws from the continental or civil law countries or regions, including Taiwan. This dual approach is illustrated by the enactment of the Company Law in 1993, the Securities Law in the end of 1998, and the Con-

⁴⁸ Huang Lie, *Rule of Law in China: Ideal and Reality*, in CONSTITUTIONALISM AND CHINA, 175, 177 (Li Buyun ed., Law Press, Beijing, 2006).

tract Law in March 1999. For instance, most of the terms of Company law bear resemblances to those of the common law countries and regions like the United States and Hong Kong. However, arrangements for supervisors and supervisory boards were drawn from civil law countries like Germany. The Securities Law was directly influenced by the Hong Kong Securities Law, with the addition of measures to fix the latter's loopholes and areas of ineffectiveness that had been revealed by the Asian financial crisis.⁴⁹

In accordance with its financial, social and political transformation process, China's new legal system has also experienced the vicissitudes of its environment, from purging influences to defining its own legal nature. For its 2010 project, it should also complete its constitutional base and regulatory laws while mitigating secondary regulations in order to advance toward a logical, coherent systematization of the various disciplines and branches of law that are currently still grouped together, oftentimes ambiguously.

The current Chinese global body of law stems from the Constitution of December 4, 1982, and its four amendments or reforms, through which the political and economic development of the new Chinese model is carried out.⁵⁰ Most current legal production has been generated from this constitutional foundation, with a few exceptions, such as the Penal Code and the Chinese-Foreign Equity Joint Ventures Law that date from 1979. It covers seven disciplines: Administrative Law with 79 laws; Economic Law, with 54 laws; Regulatory Constitutional Laws, 38; Civil and Trade Regulations, 32 laws; Social Law, 17 laws; Procedural Law, 7 laws; and Criminal Law, 1 law. This same constitutional body of laws is divided into three levels or jurisdictions with a total of 229 National Laws, Administrative Regulations, which are placed second, and Local Regulations that deal with the particular sphere of each province. China is made up of 56 ethnic groups and 5 autonomous regions, and thus a fourth level of regulations appears for the particular regulations of these districts. According to Wang Zhenmin, the development of the rule of law in China since 1978 can be divided into three stages: the first acknowledged the importance of what "ruling the country by law" would entail and culminated with the promulgation of the 1982 Constitution; the second, which lasted from 1982 to 1991, saw the further development of "legal construction"; the third began when Deng Xiaoping remarked that the objective of China's economic reforms was to develop a socialist market economy.⁵¹ However, it should be noted that from a Western point of view, the Rule of Law in China is still something that needs to be perfected. Furthermore, legal production has been marked by a change

⁴⁹ Wang, *supra* note 46, at 102.

⁵⁰ Constitution of the People's Republic of China 3 (Foreign Languages Press, Beijing, 2004).

⁵¹ Wang Zhenmin, *The Developing Rule of Law in China*, Vol. 4, No. 4 HARV. ASIA QTLY. (Autumn 2000).

of direction at various stages of the development model. In the 1980s, for example, it encouraged widespread legal production in matters of foreign investment. However, with increased capital gains in the 1990s, tax regulations and an important part of the corporate regime emerge. The section on International Trade Law is found after 2001 as a result of China's admission into the WTO. Similarly, Social Law is one of the more recent legal branches in China, where its 17 laws, specifically human rights, appear after 2001.

IV. EVALUATION AND CONCLUSION

China's economic success from 1978 to 2008 is truly surprising. Little by little, the growth rate of its GDP and its foreign trade (third place in the world in imports and exports in 2008), increased international reserves (1.8 trillion dollars in 2008) and the decline of extreme poverty⁵² (a U.N. report points out that 80% of the world poverty reduction statistics from 1978 to date corresponds to China), correspond to the implementation of a model that has been continuously built since Mao Zedong's death by a new group of statesmen headed by Deng Xiaoping up to Hu Jintao.

Of course, this does not mean that Chinese development has been a smooth process without problems. To the contrary, from the moment of its start-up to our days, one distinguishing feature has been the profound hardships that have enveloped it, such as generalized poverty, the demands of an enormous population and a minimal GDP per capita (2,500 dollars a year in 2007), etc., which have always played against its stability and good results. On the economic terrain, the strategic decisions taken have not al-

⁵² The results obtained by China in this segment are truly surprising. The drop in extreme poverty from 67% to 17% in a quarter of a century has caused general astonishment from global economic participants.

In 1978, China had an extreme poverty index of 67% or 630 million people. In 2004, this problem had been reverted to 17%, that is to say, 210 million people. This has been the result of the success achieved in implementing and sustaining economic growth from 1978 to date, which has originated the creation of nearly 300 million jobs that have incorporated urban and rural populations into the economic activity. The reduction of poverty has also derived from the good results from the application of public policies, such as the strategy and implementation of the National Poverty Reduction Program (1994) and the 2001-2010 Program for the Reduction of Rural Poverty, in addition to other development policies, such as the emigration method, by means of which people from the poorest areas of the country (remote mountainous regions, deserts, high regions, the plateaus of the southwest and areas inhabited by national minorities) are urged to move to places with more infrastructure and support for their social and economic development, thus pulverizing poverty and multiplying the social investment results. This shows us a China with a successful economic policy that is combined with a healthy social development strategy (Oropeza, *supra* note 27, 2006).

ways been successful either. For instance, during the 6th Five-Year Plan, the 14 coastal Economical and Technological Development Zone units that were set up were later reduced to four, in view of management failings. The problem of corruption could also be addressed since it has often held the model in check and has been a major challenge for the Chinese economy. However, in hindsight, the main criticisms made to the model today lie in its differing results and the high concentration of wealth it has generated among the different social layers and the different geographic areas.

2005 (Yuan)				
	<i>Eastern Area</i>	<i>Central Area</i>	<i>Western Area</i>	<i>Northeastern Area</i>
Rural Income per capita	4720	2956	2378	3378
Urban Income per capita	13374	8808	8783	8729
In relation to national income per capita (100%)	127%	83%	83%	83%

SOURCE: CHINA STATISTICAL YEARBOOK 2007.

The gap between rich and poor, in the different areas, has significantly risen. To illustrate, in health services, the percentage between the wealthiest and poorest families, instead of decreasing, has increased over the last ten years (1996-2005), going from a difference of 2.74 to 6.34 times. The difference in income levels among urban groups between 2000 and 2005 has increased from 3.61 to 5.7 times as much between the lowest and highest income brackets, with Shanghai, Tianjin and Jiangsu as the cities that have benefitted the most and Tibet, Yunnan and Guizhou as the most marginalized. In the country, this gap in income has expanded from 6.4 times to 7.2 times as great (China Statistical Yearbook, 2007). Regarding education, culture and entertainment, the breach has also widened in the same period, going from 3.84 to 8 times. All these differences are what today cast doubt on the nature of the success obtained, the increased social instability of a people that 20 years ago was still getting used to a certain degree of economic equality (though it was presented as generalized poverty), and not knowing the meaning of a middle class. For a large number of Chinese people, economic success still seems distant. Their uneasiness grows when they directly or indirectly notice the vast difference between cities like Zhejiang, Shanghai and Beijing that receive 27,703 Yuan, 22,808 Yuan and 22,417 Yuan, respectively, as annual income per capita; and Guizhou, Gansu and

Xinjiang that only receive 5,052 Yuan, 9,586 Yuan, 9,689 Yuan, respectively (China Statistical Yearbook 2007). In summary, economic success has not been uniform and disparities give rise to social uneasiness when in 2005 only 174 million people had senior citizens' insurance, 137 million had medical assistance insurance, 106 million had unemployment insurance, 83 million had accident and job insurance and 53 million had maternity insurance.⁵³

However, the current challenges for the Chinese development model are not only centered on social issues; they are also seen in diverse subjects, such as ecology and economy, where there is a broad range of new challenges to be met. On the subject of the environment, authors like Pang Zhongying speak of China's enormous "ecological debt" caused by certain facets of its economic success. Despite its great surface area (9.5 million km²), China is below average in natural resources essential for development. For example, it has only 0.094 hectares of arable land per capita, which places it 40% below the global average; 2.25 cubic meters of fresh water per capita, 30% below the global average. This situation repeats itself in forests, mineral resources and oil with 20%, 60% and 11% below the world average per capita.⁵⁴ At the same time, its accelerated economic growth has led it to consume 48%, 40%, 32% and 25% of the world's cement, crude carbon, steel and aluminum oxide production, which has in turn generated disparity in both supply-demand and pollution. According to statistics, the main polluting emissions from China have already surpassed the environment's capacity for self-purification. Of its seven river systems, more than half are severely contaminated (the Huang He, Huaihe and Liaohe Rivers are at 60% of the international level of environmental emergency, and the Haihe River is at 90%). Acid rain affects a third of the country's surface. Around 360 million hectares have water losses and soil erosion (38% of the country's land surface area), a figure that increases by 15 thousand km² every year, and desertification already covers nearly 20% of the national territory. The problem of environmental deterioration in China clearly represents a great challenge for its development and an annual cost of up to 8% of its GDP.⁵⁵

Other topics could be added to the above, such as corruption, banking debt, problems of annual employment creation, etc. However in the economic terrain, the most important challenge of China's development model is that of developing new structural lines that will determine its fate in the coming years.

Beyond the deficits presented by China's current economy, its success in matters of economic development is of such magnitude that it has come to

⁵³ DESARROLLO DE CHINA DENTRO DE LA GLOBALIZACIÓN 59 (Lenguas Extranjeras ed., Beijing, 2007).

⁵⁴ *Id.* at 62.

⁵⁵ *Id.* at 68.

represent one the most important economic achievements of humanity. However, after 30 years, China paradoxically returns to the starting point, from which it will have to validate its development model again and decide on the best lines of growth. This time, it will not only have to provide sustainability to what has been achieved, but will also have to allow for better wealth distribution to two-thirds of a population that has not benefited in the same proportion from the “Chinese Miracle.” China will have to decide what its future will be, just as it did three decades ago, at a time when the only similarity it holds with 1978 is permanent change.

The debate has already begun in China, and different groups intend to impose their own version of the next development plan, just like 30 years ago. The common root in their arguments is that what has been done is not enough and that today’s reality demands greater and different results. It is not enough to grow at an average of 10% annually; now more social and human growth are necessary. Nor is it enough to produce more goods if doing so puts its own national sustainability at risk. Likewise, the best practices for controlling inflation, which since 1996 has been in the region of 9% a year, are under discussion along with the new monetary phenomena of excessive liquidity and speculative capital. There is also talk of reviewing their export model in depth to incorporate and expand primary and tertiary sectors, as well as its internal model. Aligning and fine-tuning a vertical line of control also needs to be discussed since up to now it has constantly clashed with a horizontal market dynamic while local governments have yet to fully define their roles. In many cases, this continues to distort and break with the general strategy. Other issues under deliberation include modifying the role of State monopolies, special economic zones, and enterprises with State participation. These and other important issues are more present today than ever. They have been included in China’s agenda, in forums like the 2003 “Third Great Debate on the Reform,” and of course, in the 11th Five-Year Plan that, according to Chi Fulin, marks “[a] new historical beginning in the Development and Reform of China.” There are various documents and general opinions among those that will have to decide whether a Socialist Market Model really exists, and if so, what its development strategy will be in the coming years. In the same way, the question arises as to whether the moment has arrived —once China’s economy has been strengthened and under strong international pressure— to move toward greater degrees of free market or if, as some opinions maintain, it is time to recapture part of the socialist economy.

Regardless, after 30 years of success, we must point out that under its current strategy, China has presented the world with a new alternative that has demonstrated its viability by sustainably reducing the massive poverty indexes that had characterized it since the beginning of the 20th century. It has shown that economic underdevelopment is a problem that affected countries can successfully solve and that the way to solve it has much to do

with the institutional framework that accompanies the model, as well as the economic strategy each country chooses.

At a time in which growth has become every nation's challenge, the new Chinese model is an alternative for handling efficient public policies. It is true that the strategy's initial launching platform, that is, planning and political centralization in daily coexistence with free market capitalist policies, is a combination that few countries could imitate. But here, where many of the benchmark analyses of the Chinese model end, is precisely where the differential engineering that has made it a winner in globalization begins. For that reason, the learning opportunity for the developing economies should not be limited by the comparison of different political realities. In the first place, the political part would arbitrarily represent barely half of the model and without analyzing the rest of its public strategy for a free market global outline. Secondly, by disregarding the comparison and the lessons learned from the Chinese model because of its Communist foundation (and even, various authors have implied that its success is precisely due to that political component in its model) would be to tacitly or expressly recognize the superiority of this outline over an entire bibliography that has always privileged the superiority of the Western democratic model, especially from 1989 onward.

The political basis of each model clearly bears a different nature, but in the last example and within this same theoretical framework, the political component, more than being an impediment to analyze the Chinese model's economic measures, would give Western outlines competitive advantage. One should start from this same advantage to compare the free market strategies China has implemented and which since the beginning of the 21st century have tended to align themselves with WTO regulations. The results of the Chinese experience have shown to developing economies, especially Latin American economies and the Mexican economy in particular, that sustained growth is possible and that to a great extent it starts with each nation's good decisions, efforts and individual talents. Moreover, the main obstacles are found in each country's inability to attain political stability and find the development strategy best suited for it. Sustained growth of 10% for more than three decades is a great motivation for the different Latin American economies that have not been able to grow more than an average of 2% over the same period, within an asymmetrical framework and suffering from a lack of direction and the continuous appearance of crises that have limited their development in different ways. It is also a reflection on the real possibilities a country has at hand to face globalization and achieve sufficient and sustained growth without having to surpass all the obstacles globalization presents. These are indispensable requirements for nations that aspire to obtain the per capita level of income of intermediate countries. Of course, the networks and advantages with which the developed countries operate should not be looked down upon.

Finally, as the Tofflers correctly point out, “China now makes up part of all of us.”⁵⁶ However, we could also add that China’s economic history is far from over. In the future, it will continue to surprise us both with its changes and with its innovations, which must be kept in mind if we want to have a definite idea and an advantageous relationship with the best development strategy of the last decades.⁵⁷

On the other hand, the newness of Chinese law and especially the circumstance of its having to sanction legal criteria for a variety of economic and political systems, along with a culture that has privileged customs and values above written law for more than 5,000 years, define a reality of advances and setbacks not unknown to Chinese experts. In that regard, Li Lin states that legal construction in China continues to pose various problems and the progress of democracy and the Rule of Law continue to lag far behind its economic development.⁵⁸ For example, although its Penal Code is the oldest in its modern era (1979), new economic crimes are on the increase, such as those regarding copyright infringement, intellectual property infringement, etc., some of them with increments of 29% a year. This challenges not only the purging, but also the updating of the entire system. As to labor, the new 2008 laws face increasingly greater disputes regarding worker-employer relationships, as seen in the 75,000 claims made in 2007 involving 142,000 workers. Overall, it can be said that notwithstanding its achieved advancement, China’s legal system is still under construction. The arduous task of perfecting its constitutive norms and political order while closing legal gaps in its various disciplines lies ahead. By the same token, the systematization of the various legal bodies need to be carried out coherently and according to its inherent nature, improving on its contradictions and obsolescence, and eradicating its discretionary nature, for the purpose of favoring a more objective and efficient application of the law.

To this, Professor Li Lin concludes the following: “We cannot await the changes passively as we face the challenge of improving the legal system; however, we must also be careful not to move forward in an impertinent manner.” As to these changes, he adds, “[w]e should keep our minds clear.”

⁵⁶ ALVIN and HEIDI TOFFLER, *LA REVOLUCIÓN DE LA RIQUEZA* 449 (Debate, Mexico, 2006).

⁵⁷ JOHN HOFFMAN & MICHAEL EURIGHT, *CHINA INTO THE FUTURE* 21 (Wiley, 2008).

⁵⁸ Lin, *supra* note 47, at 18.