

The background of the cover features a detailed illustration. In the center, two hands are clasped in a firm handshake. The hands are rendered in a light, sketchy style. Surrounding the hands is a large, ornate wreath. The wreath is composed of various elements: olive branches with small olives, palm fronds, and clusters of grapes. The entire illustration is set against a light, textured background.

Emancipating the Mind in the New Era

Bulletin of the Coalition for Peace & Ethics

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Contributions by Staff

Evolutions Converging? Human Rights Internationalism and the Chinese Political-Economic Model from Reform and Opening Up to New Era Thought

***-Commentary on the 8th U.N. Forum for Business and Human Rights
-From Reform and Opening Up to New Era Thought Through the Lens of
Speeches by Xi Jinping (2018) and Xi Zhongxun (1986)***

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(Larry Catá Backer and Flora Sapio, editors)



State College, Pennsylvania
LittleSirPress@gmail.com

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A. Introduction

Introduction: Evolutions Converging? Human Rights Internationalism and the Chinese Political-Economic Model From Reform and Opening Up to New Era Thought

CPE Volume 15(1) Editors (Flora Sapio and Larry Catá Backer)

This volume 15(1) of *Emancipating the Mind* focuses on two areas of work of the Coalition for Peace & Ethics. The first centers on the continuing development of frameworks for law and policy around issues of business and human rights. The second focuses on the continuing and vigorous development of Marxist-Leninist theory with Chinese characteristics, now revolving around the development of the contributions of New Era Thought to that larger project.

At first blush these appear to be two quite distinct legal-political projects. On the one hand, Part B focuses on the great project of human rights internationalism driven by the U.N. human rights apparatus in Geneva and articulated in its most transparent forms in the annual Forum for Business and Human Rights. On the other hand, Part C focuses on the great project of constructing a Marxist-Leninist political-economic model with Chinese characteristics and its possibly most successful expression as Deng Xiaoping's Reform and Opening Up Initiative.

The two do not appear connected. And yet a closer look reveals potential linkages between these two significant projects. The tie that binds is itself the overarching ideological framework against which they both emerge—the post 1945-global economic order. For the great project of business and human rights, the premises of economic globalization represents the unfinished business of re-adjusting the allocation of authority to manage economic functions among enterprises operating in markets, the ideal forms of which are

to be protected by states, and states operating as both regulators constrained by their territorial borders, and as private actors projecting state power through markets beyond their borders. For both, the development of a coherent set of rules respecting normative expectations tied to the great human rights project of the United Nations system (itself born of the *Zeitgeist* manifested in the Universal Declaration of Human Rights) is meant to constrain the discretion that can be exercised by states and private actors respecting their management of or engagement in economic activity.

But that internationalization of constraints on the exercise of discretion in economic behaviors directly and indirectly touches on the power of states (and of private actors) to manage their own affairs within their “jurisdictions.” For states the constraints touch on their exercise of *sovereign authority*, and their freedom to develop and apply their own political-economic model. For enterprises, the constraints touch on their exercise of economic power that is not otherwise within the reach of states and lawfully applicable law. In that sense, the internationalization touches on the quasi sovereign authority of enterprise to develop and apply their own internal orders subject only to the applicable laws of the market and adjusted for the peculiarities of public law in those spaces where they might apply.

Externally, the connection is embodied in the two great projects of the post 2016 emerging economic order—the Chinese Belt and Road Initiative and the Western hub and spoke models built around either aggregated bilateral trade agreements or (in the case of the United States) an ideological model that centers the apex state around its vertical arranged public and private partners. These, in turn, touch on both the development of two of the most influential political-economic models, and their outward projection through distinct projects of internationalization.

These are the themes that explode onto global discourse in the great meetings of the Forum for Business and Human Rights in Geneva, as well as in the Chinese Communist Party leader core’s work to advance and project a version of Marxism-Leninism relevant to contemporary challenges. To discuss one is to necessary affect the other. It is the object of the editors to provide a space in this Volume 15(1) where such collisions may

be usefully examined for the light they may throw on human progress in both areas.

To those ends, Volume 15(1) is organized around the two themes. It starts with three distinct explorations of the foundational ramifications and trajectories of the business and human rights project that can be gleaned from the quite rich 8th Forum. These though on the structures of business and human rights, its contradictions, as well as its likely characteristics and aspirations in the near term. The manifestations of these objectives and their articulation as principle are also explored. It also considers the bridging theme—connecting explicitly the work of human rights internationalization with the economic internationalization framework of China's Belt and Road Initiative.

It ends with a consideration of the development of Chinese Leninism in the ideologically potent New Era. It does so through the lens of the theoretical advances undertaken through the leadership core of the Chinese Communist Party as it reflects on and moves forward from the great era of "Reform and Opening Up." Here Volume 15(1) offers English translations of two key speeches that help non-Chinese readers approach the key primary sources of these projects. It then examines these speeches in the Chinese and international context.

The UN Forum provides the outward face of the external construction of an ideal state of behaviors built around an evolving set of moral principles expressed as specific behavior expectations of institutions (including states) and individuals. It represents the external forms of the ideal state, the ideal economic enterprise, and the ideal individuals who populate both. The movement from Reform and Opening Up to New Era Thought provides the inward expression of the same impulse—of the internal construction of an ideal state of behaviors built around moral principles against which the progress of individual and institutional behaviors may be measured. To understand the impulses of one it is necessary to understand the way these impulses are expressed in the other.

We hope our readers find these of some use.

Flora Sapio
Larry Catá Backer
CPE 15(1) Editors



B. Article 1

Brief Reflections on the 8th U.N. Forum on Business and Human Rights

Flora Sapio

The 8th United Nations Forum on Business and Human Rights took place in Geneva from 25 to 27 November 2019. I was truly honored to have had an opportunity to attend the Forum, where I presented some preliminary reflections on how my country, Italy, has been implementing the Guiding Principles on Business and Human Rights in the broader context of a globalization led by multi-state initiatives.

These brief considerations are however not about Italy, on-going multi-state initiatives such as the Belt and Road Initiative, and the necessary role these initiatives play in economic globalization. The opportunities and challenges that existed in November 2019 were typical to the field of business and human rights. And typical were also the potential ways to benefit from those opportunities, and to learn from those challenges. Multi-stakeholder initiatives, such as the creation of a toolkit presenting local best practices and consolidating the business and human rights obligations voluntarily undertaken by Italian private, civil society, and public actors and were offered as a suggestion.

These brief considerations are about the UN Forum on Business and Human Rights as an event. The Forum is without doubt the most important global event where business and human rights initiatives and best practices are discussed. At the same time, the Forum displays most of the well-known mechanisms driving the production of discourse, and the creation of regimes of truth. Several of these mechanisms have already been eviscerated in a series of posts published over the last eight years on *Law at the End of the Day*, so they will not be rehearsed here.

What might be worth discussing is instead the role that the Guiding Principles on Business and Human Rights play in relation to the Forum. To some at least, the Guiding Principles might appear closely associated to the annual Forum on Business and Human Rights. So close the connection between the Forum and the Guiding Principles seems to be, that the Guiding Principle risk being overshadowed by the very subculture born around the Forum, with its ecology of roles, characters and collective rituals. Such an overshadowing perhaps poses a formidable challenge to implementation of the ‘Protect, Respect, Remedy Framework’.

How has the perception of such a close association come into existence? It seems that an identity between the Guiding Principles and the Forum has been established by ‘separating’ the document from the context from which it originally arose. This separation, in turn, has led to building a tower of dichotomies around the Guiding Principles. These dichotomies are however more apparent than real. They are furthermore extraneous to the Guiding Principles, the logic and the ethics enshrined in them.

Despite all of the existing challenges, the Guiding Principles are definitely moving from paper to practice, and all members of the family of nations, included Italy, are bringing a meaningful contribution to that process. Much more could of course be done, and perhaps acknowledging the autonomy of the Guiding Principles from institutional fora and formats might be a first step along that journey. This is not a criticism or an indictment of the Forum – I was truly privileged to be able to attend the event, in a year when participation to the Forum was restricted due to renovation works of the UN headquarters.

The idea that economic activity ought to be conducted in ways that are respectful of what we today refer to as ‘human rights’ has been articulated in different ways at various times in history, by virtually all cultures, long before narratives about ‘globalism’ and counter-narratives about ‘localism’ emerged. Closer to us in time, the idea that businesses ought to respect human rights, and efforts to embody this idea in a non-binding document have existed before the convening of the inaugural session of the Forum.

Without going back to the history of the business and human rights ‘movement’, the Guiding Principles were gestated between 2005 and 2011. In 2005, UN Secretary-General Kofi Annan appointed Professor John Ruggie as his Special Representative on Business and Human Rights. Between 2005 and 2008, Ruggie held extensive consultations with the private sector, civil society, and

national governments. All stakeholders shared a consensus about the need for a framework on business and human rights. At the end of several rounds of consultation, in 2008 Ruggie proposed a policy framework based on the state duty to protect, the corporate responsibility to respect, and access to effective remedy. The framework won praise from private businesses, civil society and governments. It was endorsed by the UN Human Rights Council, multinational corporations, small and medium-sized enterprises, civil society, and states.

John Ruggie received his initial mandate from the UN Secretary-General, yet the Guiding Principles are the product of the painstaking work he, Ruggie, undertook hand in hand with private businesses, civil society, and national governments across five continents. The Guiding Principles were born in a context that was neither public nor private, neither domestic nor multi-lateral. The ‘space’ where the Guiding Principles were created simply arose out of the interaction among those who supported the creation of a framework on business and human rights. Professor Ruggie received his appointment as Special Representative by the UN General Secretary, but the Guiding Principles are not, strictly speaking, a creature of the United Nations. Likewise, they are not a creature of the United Nations Forum on Business and Human Rights. The Forum was established only after the Guiding Principles were endorsed by the United Nations. The Guiding Principles are a creature of John Ruggie, and all the private businesses, civil society groups, and domestic states that supported the effort across the five continents. They were born, exist and operate outside of the conventional framework of international law. They ‘belong’ to all those private and public actors who contributed to creating them, and who are willing to put them into practice.

The ‘Protect, Respect, Remedy Framework’ exists well beyond the physical space of the United Nations Forum on Business and Human Rights. Equating the Guiding Principles with the Forum might lead to overlook the fundamental autonomy of the Guiding Principles, and also to construct a series of dichotomies that do not exist in reality. The dichotomies constructed around the Guiding Principles are not limited to the Guiding Principles. They can spill over to the Forum and all that which goes on at the Forum, and beyond it. As a result, and of course depending on the perspective one decides to adopt, all that which occurs outside of Geneva becomes more or less extraneous to the ‘world’ of the Forum. In the same way, all that which occurs in Geneva for 3 days a year is extraneous to the ‘world’ that exists beyond Geneva. It is as if two completely different worlds existed, in the absence of any

communication or interaction. This dichotomy, however, is only a seeming one. The world cannot be divided between those who are admitted to the ‘inner sanctum’ of the United Nations Headquarters, and those who are left outside its entrance gates. Neither can the world be neatly divided among ‘states’, ‘businesses’ and ‘civil society’. Because none of these divisions are real. They are just perceptions, that can be strengthened by conflating the Guiding Principles with the Forum on Business and Human Rights. Or, alternatively, that can be weakened by considering the Guiding Principles as an autonomous document. Such an autonomy is not limited to the document per se. It involves also the choices of businesses, civil society actors, individuals and governments related to the implementation of its principles, as well as the choices that relate to the interpretation of those principles. The Guiding Principles were not created by any single central authority – they are the product of a collective effort, and to everyone they belong. Likewise, the power to produce meaningful interpretations, that is interpretations of the document that can be used as a basis to enact best practices, belong to everyone.

The Guiding Principles exist both within the four walls of the United Nations Headquarters, as well as in the ample spaces outside its entrance gates. They exist both within the borders of domestic states, and outside of them. They are present across industry sectors, public and private enterprises, national borders, and civil society actors. Such is the power of soft-law instruments. They can be endorsed and used by all those who embrace the ethics behind them. They are not universal, because they are the product of the efforts of a limited number of businesses, academic, practitioners and states. At the same time, they are not local, because they were created across the five continents. They operate within the conventional framework of hard law, because they remind states to act upon the duties states have freely chosen to fulfil. But they do not contain specific prescriptions of ‘recipes’ states should follow. They operate outside of the framework of hard law, because they operated in those spaces state-based regulation cannot reach. The “Protect, Respect and Remedy” framework cannot be captured within any dichotomy, because the logic behind its drafting is a logic of modality. It is a logic that respects the fundamental diversity of all systems, that does not admit of the imposition of a single ‘one size fits all’ model, and yet it maintains the existence of a broader, overarching goal – respecting human rights. Herein lies the strength of this document.

The flexibility and adaptability of the Guiding Principles constitute not only its strength, but also its weakness. The Guiding Principles might be compared to water. Water that flows freely

enlivens the ground but, as strong and beneficial as it is, water sometimes needs to be received and contained within a structure. Otherwise water risks becoming dispersed, losing its usefulness. The Forum provides one of the possible structures where the water of the Guiding Principles can be contained and utilized to irrigate fertile ground. But a still water can become stagnant.

Stagnation can take many forms, but all of these might be conveniently subsumed under a single label – that of ‘dogmatism’. Dogmatism in interpretation, dogmatism in extracting meanings from the text of the Guiding Principles, dogmatism in creating ‘best practices’, and in prescribing them without taking into account local circumstances and their extreme variation within countries, and across countries and the globe. Perhaps, the single biggest challenge ahead for the field of business and human rights is finding approaches and ways to continue to benefit from the vivifying potential of the Guiding Principles, while avoiding stagnation.

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Flora Sapio

B. Reflections on the 8th UN Forum

* * *

B. Article 3

The Weak Underbelly of Business and Human Rights: Reflections on the 8th U.N. Forum on Business and Human Rights

Larry Catá Backer

1. Introduction

I was pleased to have been able to attend a portion of the 8th Annual UN Forum on Business and Human Rights.¹ The Forum has evolved to become:

the global platform for stock-taking and lesson-sharing on efforts to move the *UN Guiding Principles on Business and Human Rights* from paper to practice. As the world's foremost

¹ The Forum was established in 2011, the organization of which was assigned as one of the principal functions of the then also newly established Working Group on Business and Human Rights. Human Rights Council. Human Rights and Transnational Corporations and Other Business Enterprises, A/HRC/RES/17/4 (6 July 2011) available <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G11/144/71/PDF/G1114471.pdf?OpenElement>. The mandate was renewed in 2017. See Business and human rights: mandate of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/HRC/RES/35/7 (14 July 2017) available <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/191/47/PDF/G1719147.pdf?OpenElement>. Both were to be vehicles for the continued development of the *UN Guiding Principles for Business and Human Rights* (New York and Geneva: United Nations, 2011) [the “UNGP”]. It is “the world's largest annual gathering on business and human rights with more than 2,000 participants from government, business, community groups and civil society, law firms, investor organisations, UN bodies, national human rights institutions, trade unions, academia and the media.” UN Forum on Business and Human Rights Website, About the UN Forum on business and human rights, available <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/ForumonBusinessandHumanRights.aspx>.

gathering in this area, it provides a unique space for dialogue between governments, business, civil society, affected groups and international organizations on trends, challenges and good practices in preventing and addressing business-related human rights impacts. The first Forum was held in 2012. It attracts more than 2,000 experts, practitioners and leaders for three days of an action- and solution-oriented dialogue.²

The theme of the 8th Forum (2019) was an important one--*Time to act: Governments as catalysts for business respect for human rights*.³ For me, the theme produced a substantial irony, an irony that serves as the focus of the brief comments offered here on the state of the art in business and human rights and the perversity that it appears to foster as it lumbers along propelled by its own quite incomprehensible internal logic (at worst perhaps comprehensible in the sense that it fails to understand the consequences of the choices it appears to favor).⁴ It reminds us that ideological stances sometimes produce quite absurd results. And absurdity was the order of the day, at least for the positions taken by some of the leading states in this field.

What follows includes my brief reflections on a small part of what had been an immensely rich Forum.⁵ It is divided into two parts. The first part, which follows, *The Obliteration of the State, or, Does Lesotho Exist?*, considers drive toward the legalization of the 2nd Pillar corporate responsibility actually produces a new sort of imperial system with human rights at its center and a confederation of --wait for it--states which formed the family of "civilized nations" as they were constituted in 1900

² Website: United Nations, Office of the High Commissioner, Your Human Rights > Business > Forum on Business and Human Rights > 2019 UN Forum on Business and Human Rights, available <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2019ForumBHR.aspx>.

³ Ibid. ("The 2019 Forum will focus on the need for all governments to demonstrate progress, commitments and plans in implementing the State duty to protect and strengthening accountability").

⁴ That approach to the state of the art in business and human rights was lovingly critiqued in Larry Catá Backer, "Moving Forward the UN Guiding Principles for Business and Human Rights: Between Enterprise Social Norm, State Domestic Legal Orders, and the Treaty Law That Might Bind Them All," *Fordham Int'l L.J.* 38:457 (2015) available at: <https://ir.lawnet.fordham.edu/ilj/vol38/iss2/3>.

⁵ The 8th Forum Program can be accessed at <https://2019unforumonbusinessandhumanrig.sched.com/grid/>.

again appear take a leading position. For all other states there is, well, nothing. They disappear in the shadows of the sunshine cast by this Olympian cartel of states.

It is followed by a view of the same event from a different lens. Entitled *Reflections on the 8th U.N. Forum on Business and Human Rights--Part II, "Falling in Love Again: 'Smart Mixes' and the De-Centering of the State Within Private Compliance Governance Orders,"* it considers the contradictions in advancing the international business and human rights project on the basis of its ordering premises. What is exposed is the inversion that consciously or not, the leading actors, both public and private, of this enterprise have backed themselves into a corner. The more they assert the principles in favor of national action, the more effectively they appear to manage the privatization of human rights and economic activity in precisely the ways they actually seek to avoid.

The result is the greater the formal power of states exercised through law, the stronger the constitution of the regulatory authority of the private sphere and the more prominent the role of private actors (enterprises and the non-state sector) in the ordering and management of human rights norms, human rights accountability and human rights enforcement systems. The divide between formal authority and de jure power is both exposed and left without a strong set of conceptual constraints.

2. The Obliteration of the State, or, Does Lesotho Exist?

The Working Group's theme this year was laudable indeed. And it was also very much needed. States have been so busy pushing human rights responsibilities onto enterprises that they have managed to deflect for more than a decade any serious scrutiny of their own duty to protect human rights except in the most abstract and unaccountable ways.⁶ But that was to be expected. The UN, after all, is a member driven organization, and its members tend to center themselves in the process of situating human rights within economic policy and

⁶ The principal expression has found its form in the National Action Plan project of the Working Group. See, UN Working Group on Business and Human Rights, *Guidance on National Action Plans on Business and Human Rights* (Geneva: United Nations, November 2016) available https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf.

behavior expectations. Both international organizations, and the states whose organizing ideologies them, must necessarily prefer to export responsibility and import successes. Within this system and given the three Pillar framework of the UN Guiding Principles,⁷ it become impolitic for international actors to criticize state failures to embed and enforce their international obligations.

What emerges are behaviors and the development of implementation strategies that are complicit in state avoidance of direct responsibility, while at the same time centering the state as the critical regulatory nexus point for the delegation of both authority and responsibility (through law) to the enterprises whose behavior is the object of these efforts.⁸ And so one has had to tip toe around the issue of state failures to comply with their own human rights related duty in the context of their economic policies, even as we all join in a loud chorus of hosannas every time a large enterprise bends the knee to human rights regimes and recounts its own brave tale of embedding such responsibilities into its operations.

Even within the cynical construct within which some efforts at moving forward a human rights (or perhaps eventually better put, a liberties and protection from harm), the theme was the 8th Forum makes for good reading.

Time to act: Governments as catalysts for business respect for human rights

A key message from the 2018 UN Forum on Business and Human Rights was that governments must step up their action and

⁷ See, e.g., John G. Ruggie, *The Social Construction of the U.N. Guiding Principles for Business and Human Rights*, Corporate Responsibility Initiative Working Paper No. 67 (Cambridge, MA: John F. Kennedy School of Government, Harvard University) available https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/workingpaper_67_0.pdf.

⁸ See, e.g., Damiano de Felice, and Andreas Graf, "The Potential of National Action Plans to Implement Human Rights Norms: An Early Assessment with Respect to the UN Guiding Principles on Business and Human Rights," *Journal of Human Rights Practice* 7(1):40-71 (2015); Institute for Human Rights and Business, *Notes from the Field: Lessons Learned on Building Better National Action Plans on Business and Human Rights* (April 2016), available <https://www.business-humanrights.org/sites/default/files/documents/IHRB%20NP%20-%20ONAP%20Briefing%20-%20final%20-%202018%20April%202016.pdf>.

leadership. Currently, they are not doing enough to meet their duty to protect against business-related human rights abuse. While important legal developments are evolving in some jurisdictions, and the number of countries developing national action plans on business and human rights continues to grow, the effectiveness of current efforts and the lack of wider action are being called into question.

The lack of government leadership, reflected in governance gaps and a lack of policy coherence at all levels – national, regional and global – remains a fundamental challenge to ensuring that the human rights and dignity of all are upheld in the context of business activities. These gaps have been a recurrent theme at all Forums since the first edition in 2012, and a key reason for the development of the UN Guiding Principles on Business and Human Rights, which provide the main reference for Forum discussions.

At the Forum, civil society organizations, affected stakeholders and business alike have called on States to step up action, through strengthened regulation, improved policy coherence, and through leading by example in the various roles States have as economic actors.

The 2019 Forum will focus on the need for all governments to demonstrate progress, commitments and plans in implementing the State duty to protect and strengthening accountability. As the Guiding Principles clarify, ensuring access to effective remedy is also a part of the State duty to protect against business-related human rights abuse, and discussions on government action need to address the full spectrum of measures from prevention to remediation.

The Forum agenda will look at what governments need to do to foster business respect for human rights, including by getting their own house in order and by setting clear expectations and

creating incentives for responsible business conduct. In doing so, the agenda will consider the Guiding Principles' call for "a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights" and what this can mean in practice.⁹

The challenge starts with a close reading of the text. The focus is government--but the statement never identifies which. Moreover, the statement does not suggest the ways in which governments are to act as catalysts. Instead, governments are understood as pass throughs. Their role is to legislate as well as to provide a dispute resolution mechanism. But the operative role for governance does not reside in the state. It resides in the enterprises which exercise a quasi-administrative regulatory power derived from law. The state's duty to protect human rights is thus reduced to the mere exercise of declaring the legal character of those rights, and the corporate responsibility to respect is converted into a regulatory mandate to be undertaken through quasi-administrative structures of compliance based on prevention-mitigation-remedy of human rights wrongs. *The state, in effect, can disappear while appearing to lead.*

But the 8th Forum provided more than a space for the self-absorbing constructions of abstraction. The Forum's panels actually spun these wisps of abstract straw into regulatory gold.¹⁰ These abstractions were nicely incarnated in one of the

⁹ Website: United Nations, Office of the High Commissioner, Your Human Rights > Business > Forum on Business and Human Rights > 2019 UN Forum on Business and Human Rights, available <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2019ForumBHR.aspx>.

¹⁰ The reference is to the tale "Rumpelstiltskin," collected for and published in The Brothers Grimm, Fairy Tales (Edgar Taylor and Marion Edwards, trans., Gutenberg Project EBook 52521) available http://www.gutenberg.org/files/2591/2591-h/2591-h.htm#link2H_4_0027. It tells the tale of Rumpelstiltskin, who helps a miller's daughter who, because of the boast of her father, was made to spin straw into gold. To that end she eventually bargained away her first born child. When Rumpelstiltskin came back for the child she bargained that if she could discover his name she could keep her child. She sent servants out to collect names one of whom heard Rumpelstiltskin singing his name in his hut. With that information she was able to reveal his name and keep her child. The story is rich with analogy to the business and human rights project. It is possible to suggest the connection between the bold claims of states and their "daughter" state

most profoundly revealing panels of the 8th Forum: “Scaling up respect for human rights in public investments: learning from government investment funds.”¹¹ Its object was to describe the success of this model around the utility of sovereign wealth funds to discipline the recalcitrant enterprise (and the complicit state).¹² The panel certainly met its objectives. Yet in doing so it revealed far more—it named itself—exposing the real consequences and transformations of its application of theory to the re-construction of a global political order in the name of the business and human rights project applied through its version of the meaning and implications of the principles of the UNGP.

The tale of the experiences of government investment funds served not merely to chronicle their victories in their heroic struggle to press forward their version of the business

intermediaries like SWFs and multinational enterprises, tasked to actually making goods the boast. But does that make a Rumpelstiltskin of the international organizations who spin the straw into the gold of compliance? Perhaps. In our version of the tale, though, it appears that Rumpelstiltskin may manage to take the child. For my purposes here, however, it is enough to suggest that the role of Rumpelstiltskin, turning the “straw” of theory into the “gold” of policy and regulation, that is, of action, makes these panels a critical space for analysis. But to give these panels a name—to name them and by naming them knowing them—that is the ultimate value of the 8th Forum.

¹¹ Panel Monday, November 25 (13:30 - 14:45), “Scaling up respect for human rights in public investments: learning from government investment funds,” description available <https://2019unforumbhr.sched.com/event/U97z/scaling-up-respect-for-human-rights-in-public-investments-learning-from-government-investment-funds#>.

¹² As described in the Forum Program Website:

This panel aims to generate a dialogue around current experiences with avoiding and addressing human rights risks by government funds such as sovereign wealth funds (SWFs) and public pension funds. This session will look at how two Councils on Ethics of government investment funds have addressed human rights risks and engaged with the UNGPs in their work. Key topics of discussion include: screening, information and prioritization challenges; the strategic use of the UNGPs in driving change among companies; leverage in investment relationships: active ownership vs. exclusion; transparency and reporting. Insight into operational challenges and opportunities faced by SWFs and public pension funds will enable a concluding discussion about policy and regulatory tools that can enable public asset owners and managers to scale up respect for human rights.

Ibid.

and human rights agenda. It also exposed the contradictions of the logic of that version of the UNGP principles that, in that name of centering the state, exalted projections of state power through market mechanisms and in the process strengthened some states and extinguished others from any meaningful engagement in the enterprise of business and human rights. These conclusions might best be examined through the lens of a retelling of the stories spun out in the 8th Forum panel. In that re-telling, a tale of the great success of the Norwegian Pension Fund Global¹³ as a great example of the 8th Forum theme, into a story that illustrates the way that the principles propelling that theme might actually impede or distort the 8th Forum theme. In the process, this re-telling nicely exposes the contradictions of the 8th Forum theme and the challenge for states of acting as catalysts.

The story is entitled--

Does Lesotho exist?

And it goes something like this:

The Pension Fund Global (or at least some elements within its organization structure) became concerned for reasons of their own about the state of human rights in the manufacture of textiles in Lesotho. Let us assume they had the best of all motives—the desire proactively to carry out the will of the Norwegian people expressed through law and delegated to the Norges Bank and its Ethics Council facility.¹⁴ The consequences, of course, is the production of law-based compliance overseen by an administrative apparatus within

¹³ The Norwegian Pension Fund Global is one of two principal investment mechanisms developed by the Kingdom of Norway to manage sovereign revenue by privatizing its investment and projecting that investment abroad through private markets managed by the Norges Bank. For a discussion see, e.g., Norges Bank, Government Pension Fund Global: Annual Report 2019 (No. 22, 2020) available https://www.nbim.no/contentassets/3d447c795db84a18b54df8dd87d3b60e/spu_annual_report_2019_en_web.pdf. Discussed in Larry Catá Backer, "Sovereign Investing and Markets-Based Transnational Rule of Law Building: The Norwegian Sovereign Wealth Fund in Global Markets," *American University International Law Review* 29(1): 1-122 (2013).

¹⁴ See, e.g., Larry Catá Backer, "Sovereign Wealth Funds as Regulatory Chameleons: The Norwegian Sovereign Wealth Funds and Public Global Governance Through Private Global Investment," *Georgetown Journal of International Law* 41:425 (2010)

which the laboring oar of government is delegated to enterprises (state or private) now responsible for compliance.¹⁵

But in any case, the Pension Fund Global could proudly be pointed out as a good example of states leading through a “smart mix”. And so they were right to point proudly to this instrument of mixed measure (Norwegian) state leadership. And it could also point out just how well aligned were Norwegian law and the Pension Fund Global’s Ethics Guidelines with the spirit of the UNGPs and international law generally of which the Norwegian state apparatus proudly reminded others, especially in international fora.

For some time, so this story goes, the good fathers and mothers of the Pension Fund Global apparatus experienced a growing concern with the potential bad behavior of Asian participants in production chains. They were particularly concerned that the proper values of human rights relating to gender might not be as carefully observed where the home state of the production chain was centered in China than when operated by others.¹⁶ To the ends of satisfying its curiosity, they commissioned a study about textile manufacturers in Lesotho.

The study was to focus on three garment factories are owned by the Taiwan-based global jeans manufacturer, Nien Hsing Textile Co., Ltd. (“Nien Hsing”) which it was believed collectively employ roughly 10,000 workers. The factories are known as C&Y Garments (“C&Y”), Nien Hsing International, and

¹⁵ Discussed, e.g., Larry Catá Backer, “The Problem of the Enterprise and the Enterprise of Law: Multinational Enterprises as Polycentric Transnational Regulatory Spaces,” in *Oxford Handbook of Transnational Law* (Oxford University Press, forthcoming 2020); Larry Catá Backer, “Regulating Global Markets: What we Might Learn From Sovereign Wealth Funds, in Reshaping Markets: Economic Governance,” *The Global Financial Crisis, and Liberal Utopia* (Bertram Lomfield, Alessandro Somma and Peer Zumbansen, eds., Cambridge University Press, forthcoming 2015)); Larry Catá Backer, “Governance Without Government: An Overview” in *Beyond Territoriality: Transnational Legal Authority in an Age of Globalization* 87-123 (Günther Handl, Joachim Zekoll, Peer Zumbansen, editors, Leiden, Netherlands & Boston, MA: Martinus Nijhoff, 2012).

¹⁶ For an observation on this point, see, e.g., Larry Catá Backer Incoherence or Discretion in Corruption and Investment Approaches?--The Norwegian Pension Fund Global Places Petroleo Brasileiro SA (Petrobras) under observation, Law at the End of the Day (2 February 2016) available <https://lcbackerblog.blogspot.com/2016/02/incoherence-in-corruption-and.html>.

Global Garments. Nien Hsing also operates a textile mill in Lesotho, Formosa Textile Company, and has recently opened a fifth facility, called Glory International. All of the facilities are located in the Thetsane Industrial Area in Maseru, the capital of Lesotho¹⁷.

Now, of course, in this age of piece work, of the so-called gig economy,¹⁸ and of an NGO sector increasingly putting its employees adrift, the Pension Fund Global or its instrumentalities could not be bothered doing the work themselves. But Norway is rich, rich especially from profits derived from its substantial contribution to climate warming and environmental degradation, which it appears to celebrate in "some of the highest levels of resource use and CO2 emissions in the world."¹⁹ But why be fussy when here one encounters a state that can lead by example in the imposition of legal and compliance regimes far from its shores?!

And so they were able to commission a third party—the US-based organization *Workers Rights Consortium*²⁰—to conduct what ultimately became a two year study.²¹ It doesn't

¹⁷ Worker Rights Consortium, *Worker Rights Consortium Assessment Re: Gender-Based Violence and Harassment at Nien Hsing Textile Co., Ltd (Lesotho); Findings, Recommendations, and Status* (15 August 2019), p. 3; available <https://www.workersrights.org/wp-content/uploads/2019/08/WRC-Factory-Assessment-re-Nien-Hsing-08152019.pdf>.

¹⁸ See, e.g., Noam Scheiber, "Is Gig Work a Job? Uber and Others Are Maneuvering to Shape the Answer," *The New York Times* (26 March 2019) available <https://www.nytimes.com/2019/03/26/business/economy/gig-economy-lobbying.html>.

¹⁹ Jason Hickel, "The Dark Side of the Nordic Model," *Al Jazeera* (6 December 2019) available <https://www.aljazeera.com.cdn.ampproject.org/c/s/www.aljazeera.com/amp/indepth/opinion/dark-side-nordic-model-191205102101208.html>.

²⁰ "The Worker Rights Consortium (WRC) is an independent labor rights monitoring organization. We investigate working conditions in factories around the globe. Our purpose is to document and combat sweatshop conditions; identify and expose the practices of global brands and retailers that perpetuate labor rights abuses; and protect the rights of workers who make apparel and other products." Worker Rights Consortium/ About available <https://www.workersrights.org/about/>.

²¹ Worker Rights Consortium, *Worker Rights Consortium Assessment*, supra note 17. Described in "Female garment workers in Lesotho factories are being forced into sex," *Dazed* (August 2019) ("This week, the US-based organisation Workers Rights Consortium published a report outlining 'gender-based violence and harassment' allegedly taking place in three factories in Lesotho, Southern Africa. All three factories are owned by a

really matter who this group was or whether they were or whether they profited in the profit (consulting) or non-profit (NGO) sector.²² It is enough to know that there is now a healthy enough industry whose economic activity is centered on analysis of the economic activity of others within the construct of the human rights effects of economic activity. More to the point, this industry now represents a substantial, and markets based, privatization of what had traditionally been the enforcement activity of states. And it is an industry that, true to the logic of the markets in which they are embedded, might be understood to need to please their clients in order to survive. Not that there is anything wrong with this, of course. Nor is this to suggest that the report misrepresented the situation in any way. It is merely to suggest that in the context of this story of the grandeur of governments leading by example through a smart mix, it is necessary to situate that smart mix within the context, including the context of delegation, offshoring, and privatization, in which the "new" government as catalyst" framework operates. In any case it adds to the spice in the story of a European sub-national financial entity projecting the domesticated international project of the state that owns it, projecting that project through a US third party contractor into Africa.

And off went this third party provider to its work. After two years, the Workers Rights Consortium produced a set of findings—findings which it delivered to the Pension Fund

Taiwanese company named Nien Hsing Textile Co., whose clientele include American denim brands Levi Strauss, Calvin Klein, and Wrangler. ") available

<https://www.dazeddigital.com/fashion/article/45664/1/report-lesotho-africa-female-garment-workers-sexual-abuse-assault-factories>.

²² This is not to be read as a criticism of this specific protagonist. An assessment or constitution or review of the Worker Rights Consortium is central to this tale. One can assume for purposes of this re-telling that the Worker Rights Consortium operated ethically and in good faith throughout the process. "Founded in 2000 by international labor rights experts, students, and leading universities, the WRC assists universities with enforcement of binding labor standards they have adopted to protect workers producing apparel and other goods bearing university logos. The WRC has 157 university and college affiliates in the United States and Canada. The WRC also works with government entities, including municipal governments and pension funds, seeking to enforce human rights standards." Worker Rights Consortium/ About available <https://www.workersrights.org/about/>.

Global.²³ And probably to one one's surprise, the findings described the most dreadful sort of rampant sex harassment in the textile industry in Lesotho that cried out for response. Indeed, the findings suggested that the conditions were made worse in part because of the way in which the Taiwanese company effectively stripped workers of any sort of institutional apparatus for preserving their liberties against the personal depravities of those individuals who asserted control over their lives as well as their working conditions.²⁴

As described by the storyteller, before the findings were finalized and circulated in August 2019, it went first to the bosses at the institution that had paid for the work. The consensus at the Norwegian Pension Fund Global was to exclude the offending textile companies from its investment universe—the ultimate penalty for human rights bad behavior measured against the Ethics Guidelines. And that, indeed, would certainly have been an appropriate course of action to take.

But, it seems, the Workers Rights Consortium had a better idea. To exclude the companies involved in failing to prevent these activities might make the good folks at the Pension Fund Global sleep better for having acted in a morally (and legally) righteous way. However, righteousness might not contribute to ameliorating the conditions faced by these women in the Lesotho factories. And, indeed, they noted that "C&Y, Global Garments, and Nien Hsing International, supply denim garments to Levi Strauss & Co. ("LS&Co."), The Children's Place ("TCP"), and Kontoor Brands ("Kontoor")."²⁵

Rather than use the Pension Fund Global's market power (exercised through exclusion), or resort to the legal system (hardly on the radar, and in any case whose legal system?), WRC suggested that it might be more effective to rely on the UNGP's

²³ Worker Rights Consortium, *Worker Rights Consortium Assessment*, supra note 17.

²⁴ "As detailed in the report, many of the women working in the factories claim to have been coerced by their male supervisors, bosses, and co-workers into sexual relationships to keep their employment contracts and 'more favourable working conditions'. In the published assessment, one female employee states: 'For the women, this is about survival and nothing else... If you say no, you won't get the job, or your contract will not be renewed.'" "Female garment workers in Lesotho factories are being forced into sex," *Dazed* (August 2019), supra, note 21.

²⁵ Worker Rights Consortium, *Worker Rights Consortium Assessment*, supra note 17, p. 3.

2nd Pillar mechanisms. In the language of the story it might have gone something like this: When the brands find out about the activities, and the likelihood that these conditions will be widely reported, they will go ballistic. Why don't you let the brands do your work for you? After all, they already have in place a full complement of 2nd Pillar private law governance structures that give them substantial leverage (should I dare use that word) over their downstream supply chain associate.

So rather than rely on law, and administrative compliance forms, the Worker Rights Consortium suggested that markets might work better—that is, that the regulatory mechanisms of the societal sphere, governed through the systems of private law that have been constructed around private systems for responsibility to respect compliance might be more effective. And so the Pension Fund Global was persuaded that rather than making a large splash with the distribution of the report within the performance tropes of exclusion, that instead the brands purchasing product from these textile factories ought to be approached first. The objectives were quite transparent—if the brands were informed that garments they sold were manufactured under conditions of severe gender harassment, then they might be induced to better police their own internal law of production (their supplier codes of conduct and the like), to motivate the offending textile factories and their Asian owners, to do the right thing.

Yet at the same time, WRC noted two significant factors that drive the shaping of the use of this tactic. First was the difficulty of ensuring effective 2nd Pillar structural mechanisms for compliance (and implicitly underlining the possibility that human rights due diligence were not working as well as they could be in part because they lack effective incentives to aggressively monitor).

The abuses outlined herein are grievous—and it must be noted that the brands sourcing from Nien Hsing's Lesotho factories did not detect them via their voluntary codes of conduct and monitoring programs, which allowed the abuses to continue. It is relevant to note, in this regard, that workers, in offsite interviews, testified that Nien Hsing managers concealed their actual conditions and treatment from brand auditors, including by

pressuring employees not to speak truthfully to brand representatives who visit the factory.²⁶

Second, they also understood that private law governance regimes that mark 2nd Pillar Human rights governance systems within supply chains were only as effective as they were legally enforceable.

And thus the need to look to workable approaches.

In developing proposals for corrective action to address GBVH at Nien Hsing in Lesotho, the WRC was informed by 1) our recognition of the fact that the management responsible for the existence of a culture of sexual harassment and coercion in a workplace does not suddenly develop the will and capacity to eliminate the problem through its own managerial efforts; 2) our experience with the generally inadequate approach of global brands to improving labor conditions at their contract factories, via their existing auditing systems; and 3) the promising track record, by contrast, of enforceable labor rights agreements between brands and organizations representing workers in their contracted supply chains. These include the Accord on Fire and Building Safety in Bangladesh (which has transformed the physical infrastructure of Bangladesh's enormous garment industry and radically improved safety protection for more than 2.5 million workers) and the Fair Food Program in Florida (which has largely eradicated sexual harassment and coercion, and many other labor rights abuses, in an industry that is among the most poorly regulated in the United States).²⁷

The Pension Fund Global agreed. And, indeed, that was the course of action undertaken. The brands, indeed, it might have been reported, "went ballistic." They immediately undertook to remediate, remedy and put in place agreements and other matters to prevent these sorts of conditions at factories from

²⁶ Ibid., p. 7.

²⁷ Ibid., p. 5.

which they sourced their product. The consequence was also predictable under the logic of the UNGP's 2nd Pillar—and then began a program of intense monitoring and correction.²⁸

What a story! What a fantastic tale of success! How good all of the stakeholders must feel for the improvement in the condition of the people whose human dignity had been so thoroughly abused! Yes.

Yet from the perspective of the 8th UN Forum, and especially for the advancement of its great theme for the year, the story proved a horrible and utter failure. And not just a horrible and utter failure, but one laced with the sort of North-South arrogance that unmasks the reality of the failure of the fundamental principle on which the post 1945 state system was created--the horizontal parity of states. The story, it turns out is less about the triumph of privatized public projections of authority through financial markets, or of the value of third party private providers as essential mechanisms for vigorous accountability, as it is the story of the disappearance of states that no longer serve the interests of the public and private sectors in apex states. It is the story of a the manifestation of power in a post-globalization world in which sovereignty is determined by one's place in vertically arranged production chains, rather than on the character of the organization as a state or a private (profit or non-profit, state or privately owned) enterprise. What remains of states below the apex of production chains are spaces of convenience in which one can pour responsibility when convenient, and which are continued to provide the veneer of sovereignty designed to give the illusion of engagement in political-economic processes.

From that perspective, it might be useful to read the story a very different way. It is the story of the obliteration of Lesotho, and of its utter irrelevance in a context in which both



public and private international actors who dominate the mechanics of global production can afford to treat the sovereign and independent state of Lesotho as if it did not exist. This is not a unique story, but rather the normalization

²⁸ Ibid., p. 5-8.

of storytelling that is now being normalized as the emerging framework within which new vertically arranged power orders are being established. Just as Bangladesh essentially disappeared in the story of the aftermath of the Rana Plaza



factory building collapse—as powerful states, powerful brands, powerful NGOs, and international organizations took over the project of setting things right.²⁹ The moral of this story is that for the purposes of constructing the structures of a coherent global framework for business and human rights, states like Lesotho may well be reduced to little more than their flags—that is to the reduction of the state to its outward signifiers without internal meaning.

But what does it mean to disappear in this contemporary story of advancing the business and human rights project through states? It means to certain states “count” and are integral stakeholders within emerging governance frameworks, and other states do not. The categorization appears to depend on the place of the state within global production, as well as its governance capacity and power in relation to the owners of inbound investment. To some extent it suggests that the place of states as net importers or exporters of investment as well as the size of that investment may determine the extent to which the state may acquire a place at the business and human rights governance table. But other than that, what role for the state? In the case of Lesotho—almost nothing—the state appears to have been reduced to a space within which global regulatory flows may manifest. In the case of Bangladesh, a set of ministerial functions centered on their use as internal police (the application of their criminal law and administrative regulations).³⁰

It is in this context that the irony of the Forum theme begins to resonate in ways that ought to worry (unless of course one is already nicely embedded within those rarefied corridors

²⁹ Larry Catá Backer, “Are Supply Chains Transnational Legal Orders? What We Can Learn from the Rana Plaza Factory Building Collapse,” *UC Irvine Journal of International, Transnational, and Comparative Law* 1(1):11-65 (2016).

³⁰ Recounted in *Ibid.*

of power in the most powerful state and their public and private institutional instrumentalities.

What did the government of Lesotho do? How were they involved?

The story as related at the 8th Forum makes it clear that Lesotho was nowhere to be found in this story. Let me suggest all of the questions that perhaps ought to be considered in rethinking the positive values of this story from a state-centered approach:

1. Did the Pension Fund Global seek to advise the government of Lesotho of its concerns before acting?
2. Did the Pension Fund Global seek to work together with the government of Lesotho?
3. Where, if anywhere did the Pension Fund Global (or more to the point given national ambitions and the harvesting of "good state" points harvested by the Kingdom of Norway in this affair) did the Norwegian state offer to provide any capacity building support or funds to support governmental "smart mixes" undertaken by the Lesotho government?
4. How did the national labor unions or the brands involve the host state in its negotiations? To what extent did they play an active role in protecting national interests in the management of this small portion of larger global production chains?
5. To what extent will these binding agreements be litigated or enforced in Lesotho or through its courts?
6. Where was Lesotho involved in the construction of the legal framework within which such issues would be subject to a revised and more effective legal structure within Lesotho itself.
7. And where, if anywhere, were the officials of the Taiwan region in the context of the story?

One gets the point. The story about Lesotho--like that of Bangladesh after Rana Plaza--highlights the great contradiction of the movement to strengthen the 1st Pillar duty of states.

Make no mistake, the story of the triumph of brands and unions overcoming the horrific conditions of sexual harassment in those textile factories is indeed a story of a great success. *But it is not the story of the success of law, or of the state system, or of smart mixes, or of any of the themes outlined in the lofty language around which the 8th Forum was organized.* Indeed, the contrast between the story of Lesotho and the 8th Forum thematic ideals could not be more stark:

The 2019 Forum will focus on the need for all governments to demonstrate progress, commitments and plans in implementing the State duty to protect and strengthening accountability. . . . The Forum agenda will look at what governments need to do to foster business respect for human rights, including by getting their own house in order and by setting clear expectations and creating incentives for responsible business conduct. In doing so, the agenda will consider the Guiding Principles' call for "a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights" and what this can mean in practice.

Instead of movement toward this ideal, what the 8th Forum revealed was the reality of something quite different.

1. States are now dividing along "class" lines. Rich, powerful, and "leading social forces" states--the modern form of the late 19th century "Family of Civilized states" will now play a leading role--directly or through their instrumentalities--in projecting legal and governance mechanisms abroad. I have suggested the plausibility of this trajectory of evolving globalization more than a decade ago.³¹

³¹ Larry Catá Backer, "Economic Globalization Ascendant and the Crisis of the State: Four Perspective on the Emerging Ideology of the State in the New Global Order," *Berkeley La Raza La Journal* 17(1):141-168 (2006) Available <http://lawcat.berkeley.edu/record/1120487/files/fulltext.pdf>.

2. For Norway and large international NGOs this means both bragging rights, and a sort of entitlement to project their authority. There was a sort of context to the choice of a focus on Lesotho. The international community had already targeted Lesotho for what was deemed to be an unacceptable level of sexual violence. More importantly, it produces an entitlement to bypass the sovereign state governmental apparatus in whose territories they are seeking to do good. But by doing good in this way might they also be doing bad? Sovereignty is not a matter of convenience--nor should it be reserved to the largest and most powerful states. At least that is what we have been taught to believe. The story of Lesotho reminds us that these are stories we might relate to our impressionable populations (to give them hope?) but that their connection to reality is at best tenuous.

3. For states like Lesotho and Bangladesh, the choices are substantially unpalatable, especially where they are dependent on others for connection to global production that produces at least some sort of political and economic stability. Either they can bend the knee and perfect the art of invisibility (being called out merely for whatever ceremony is used to assuage any possibility of guilty conscience among those powerful forces actually calling the shots). Or they might (as was also hailed in the 8th Forum) paraded about as one of the class of grateful emerging states that, having received the wisdom of leading state forces have, under their tutelage, produced the sorts of forms and legal structures approved by them. *This strategic capacity building is meant not to provide capacity as much as it is directed toward compliance.*

4. This suggests that, for all intents and purposes, the 1st Pillar State Duty is in danger of being reduced to a state duty to protect human rights under the tutelage and subject to the approval and monitoring of the newly constituted *Family of Civilized Human Rights States* and their international public and private instrumentalities. Barbarian states will either be colonized or co-opted. They will be rewarded for compliance along approved lines. But they will not be invited to the table or taken seriously in the construction of global human rights in economic activity baselines. That is to be expected in a world in which persuasive authority is a function of the control of the mechanics of global administration.

5. It also suggests the extent of the absurdities of the current effort to develop a comprehensive treaty for business and human rights.³² The story of Lesotho and its place in the actual management, though the exercise of 1st Pillar state power, of business conduct in global production chains serves as a harbinger of the allocation of power within any such comprehensive legal instrument. At best, then, the small states that continue to advance its projects, might well understand its power not in the ability to manage, under law, the human rights harms of economic activity within their respective national territories. Rather, they might come to understand its power as a means of acquiring a power to negotiate the delegation of such sovereign authority to the *Family of Civilized Human Rights States* in quid pro quo transactions.

6. It is important to note, however, the extent of the great triumph that the story of the confrontation of gross sexual harassment cultures in Lesotho represents. But it is not a great triumph of law or legal systems. It is not even the triumph of regulatory extraterritoriality. It is rather the great triumph of the private sector, of markets, and of the rising power of privatized law making within global enterprises, within global NGOs, and within globally involved state instrumentalities (SWFs and SOEs). It is, in other words the great triumph of the 2nd Pillar and not the 1st.

7. What is left to the 1st Pillar under what is emerging as its structural order? There are a number of "morals" to the story of Lesotho.

First, the power of the force of the 1st Pillar will lie in the willingness of the great powers to project 1st Pillar legalities through the production chains it controls. One already saw this

³² For our own views of the effort in its current draft form, see Larry Catá Backer and Flora Sapio (eds.), *Emancipating the Mind: Bulletin of the Coalition for Peace & Ethics* 14(2):149-351 (2019; Special Issue): Commentary on the U.N. Inter-Governmental Working Group (Geneva) 2019 Draft "Legally Binding Instrument to Regulate, in International Human Rights Law, The Activities of Corporations and Other Business Enterprises" (Textual and Conceptual Analysis) available <https://www.thecpe.org/little-sir-press-a-self-publishing-collective/emancipating-the-mind-bulletin-of-the-coalition-for-peace-and-ethics/issues-emancipating-the-mind-bulletin-of-the-coalition-for-peace-ethics/volume-14-no-2-october-from-globalization-to-empire-essays-from-the-cpe-working-group-on-empire/>.

emerging into the structures of global financial regulation emerging after the economic crisis of 2006-8.³³

Second, emerging multilateral orderings of production--China's Belt and Road Initiative, the US America First Project (if it ever gets off the ground conceptually), and the European moral-regulatory project (of which the Pension Fund Global is an example)--are far more likely than a treaty to discipline and advance the state of the art in controlling human rights affecting behavior in economic activities. Whether, in fact, this is undertaken is likely the principal task facing the hopefully not oblivious UN apparatus.

Third, the old debates about extraterritoriality begin to assume an increasingly anachronistic character as international actors move from rogue elephant regulatory regimes projected abroad to coordinated efforts among more and more tightly banded groups of states. This suggests, as well, the ultimate problem with the 8th Forum theme. Hundreds of states legislating to their hearts content and with different content and effect (the movement toward all sorts of Modern Slavery Acts as an example) will not produce an efficient or useful regulatory environment (even if one were inclined to see in regulation the solution to the problem of business and human rights). Rather it will create the sport of regulatory forest that will invite strategic behaviors and conflict.

Fourth, the future appears to belong to private law. What the story of Lesotho really signals is that law is at its most useful when it is undertaken by the key stakeholders in global production. In that context the state provides stability but not specific regulatory rules.

Fifth, as a consequence, the emerging partnership between business (global production) and international organizations (as the sources of substantive rules against which business conduct is measured) will be far more critical to the development of a robust human rights centered culture of economic activity than the encouragement of law making in all of its glorious variation by states embedded in parts of global

³³ Larry Catá Backer, "Private Actors and Public Governance Beyond the State: The Multinational Corporation, the Financial Stability Board and the Global Governance Order", 18 *Ind. J. Int'l L.* 751-802 (2011)

production. The exceptions, of course, are the emerging multilateral production regimes identified above.

Sixth, none of this may matter in the face of the transformation of law from a set of written normative commands to a deeply embedded system of data based compliance. In a word in which ratings based on measured activity, produced by an analytics grounded in an approved or privileged set of data may make all of this structuring (and the theory underlying its controversies) little more than a historical artifact.

3. Falling in Love Again: 'Smart Mixes' and the De-Centering of the State Within Private Compliance Governance Orders'

I often stop and wonder; Why I appeal to men
 How many times I blunder; In love and out again
 They offer me devotion; I like it, I confess
 When I reflect emotion; There's no need to guess
 Falling in love again; Never wanted to
 What am I to do; I can't help it
 Love's always been my game; Play it how I may
 I was made that way; I can't help it
 Men cluster to me; Like moths around the flame
 And if their wings burn; I know I'm not to blame
 Falling in love again; Never wanted to
 What am I to do; I can't help it
 (Orchestral Interlude)

Falling in love again; Never wanted to
 What am I to do; I can't help it
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³⁴ Transcribed by Mel Priddle (13 November 2013) available <https://lyricsplayground.com/alpha/songs/f/fallinginloveagain.html>. This song was submitted on November 22nd, 2012 and last modified on July 30th, 2017. Copyright with Lyrics © Universal Music Publishing Group. Written by F. Hollander, Reg Connelly.

In the 1930 German film *Der Blaue Engel* (The Blue Angel), based on Heinrich Mann's 1905 novel *Professor Unrat* (Professor Garbage),³⁵ a conventional high school teacher (Professor Rath (in the book Professor Raat), played by Emile Jennings) descends from the heights of conventional respectability to the role of cabaret clown and madness in the orbit of the cabaret's dancer Lola Lola (played by Marlene Dietrich) with whom he has an affair that ruins him³⁶. The signature song that captures the film's zeitgeist, *Ich bin von Kopf bis Fuß auf Liebe eingestellt* (Falling in Love Again),³⁷ nicely captures the relationship between the state (as Professor Rath)—conventional and bound by the rules that gives his essence meaning—and the markets based UNGP 2nd Pillar as the foundation of regulatory governance (Lola Lola) whose by being herself proves both irresistible to and the undoing of the good professor.

But of course, the UN Forum is not the cabaret to which those standard bearers of respectability--the state--are drawn and seduced by the freedom it offers from the convention that binds states tighter than a sealed drum. Nor is the 2nd Pillar if the UNGP our Lola Lola, against which our good professor (states) have been warning their students (global enterprises), and the protection of whose respectability has drawn states to the cabaret in which Lola Lola is encountered. States have not become the cabaret clowns of the UN Forum; nor has the UNGP 2nd Pillar and its portal opening to regulatory governance³⁸

<https://www.letsingit.com/marlene-dietrich-feat.-marlene-lyrics-falling-in-love-again-1zvsnbq>. LetsSingIt - The Internet Lyrics Database.

³⁵ Heinrich Mann, *Professor Unrat* (Rowohlt, 1951 (1905)). The book serves as a critique and caricature of 2nd Empire German life, customs, and manners. It focuses on the perversion of passion as obsession (for a rigid morals, structure of authority, application of principle, etc.), and the way that passion can be inverted to become the instrument of the very thing it was meant to control or in the extreme to suppress. These are the notions nicely expressed in the lyrics with which this section begins.

³⁶ This is a variation from the book where once financially ruined, the professor becomes the instrument through which his now wife can continue to seduce and entertain gentlemen friends. Ultimately efforts to help are unsuccessful and, reported to the police, they both are arrested and led off to jail.

³⁷ See note 34, *supra*.

³⁸ For a discussion, see, Larry Catá Backer, "Theorizing Regulatory Governance Within its Ecology: The Structure of Management in an Age

made the state pathetic and an object of ridicule by its students and the society that expected better.

But there are some resonances made clearer when one steps back for a second from the sometimes turgid and interest-laden discursive tropes that mark these sorts of conversations for the clarity of a song lyrics written well before the idea of globalization of the sort encountered today could even have risen to the level of science fiction. What that clarity provides is an insight. It is not that the state has humiliated itself by abandoning law in succumbing to the allure of the UN GP 2nd Pillar and the framework of regulatory governance. Rather it is that the embrace by states of compliance-accountability-monitoring-reporting structures has turned law into a form of cabaret clown, whose own performance now makes it impossible for the state to remain respectable through law. It is in "Falling in Love Again" with law, that the societal sphere is again able to transform what had once been its master into little more than the accounting house, the auditors--through which it can retain its legitimacy with its global constituency. In the process, of course, law becomes constitutive rather than normative, and the state, again, loses its centering (at least conventionally understood) position in the cosmology of power relations in global production. Of course our Lola, the markets at the core of the global production chain, would just laugh and say, "Falling in love again; Never wanted to; What am I to do; I can't help it."

For those who find this too esoteric (precisely because the analogies are meant to rip the reader from the insides of the leaden discursive tropes inside of which the respectable tend to argue these things, within the bounds of propriety), perhaps seeing the emerging role of the state through the lens of the Swedish Trade Minister, Anna Halberg, will drive the point home.³⁹

of Globalization," *Contemporary Politics* 24(5):607-630 (Special Issue 2018).

³⁹ Anna Halberg, "Stepping up government leadership: from commitments to action". Minister for Trade Anna Hallberg's speech in the opening plenary of the 2019 UN Forum on Business and Human Rights. November 25th, 2019 available <https://www.swedenabroad.se/es/embajada/un-geneva/current/statements/un-forum-on-business-and-human-rights-minister-for-trade-anna-hallbergs-speech/>.

Excellencies, distinguished guests, ladies and gentlemen, I am very pleased to be with you today at this important meeting. The United Nations Forum on Business and Human Rights concerns matters close to my heart: the respect and promotion of human rights in the business sector.
* * *

I am here today because Sweden's government has a strong commitment to protect and fulfil human rights and fully support this theme for the forum. Let me share with you seven key areas for the Swedish government's work.

I will start with social dialogue. In 2016, the Swedish Prime Minister initiated the Global Deal partnership. The Global Deal is a multi-stakeholder partnership hosted by the OECD in collaboration with ILO, promoting an enhanced social dialogue. We believe this is crucial to foster decent work and quality jobs globally. By extension, we believe it contributes to greater equality and inclusive growth.

In Sweden we can see that almost everyone benefits from increased trade and open global markets. We have a social security system that is engineered for coping with change. For example, if a company decides to close its operations at a factory, our answer is not mainly to try to stop it, but to handle the consequences in a way that protects the workers and the society.

Change is not a threat – it's an absolute necessity! But status quo and locking in old production methods is a threat to any company and any state. We have a social safety net that steps in. We offer retraining so that workers can find new jobs in more profitable and modern sectors.

Thanks to this system, Swedish trade unions are pro-change and pro free trade. We have strong unions and our Swedish businesses want strong unions. They appreciate unions as partners of the social dialogue. This partnership between

employers and employee organizations has also been a key factor behind many successful Swedish companies.

Workers win by gaining influence, improved working conditions and better opportunities for education and social welfare.

Companies win from a constructive working atmosphere, an openness to change, increased productivity and stronger consumers.

Society wins from inclusive growth and social stability.

It's a win-win-win situation. I call upon other states, organizations and companies to join the Global Deal initiative.

The second area is feminism. The Swedish government is a feminist government. We emphasize the human rights of all women and girls as absolutely essential for sustainable economic development. This is not just the right thing to do. It also makes sense economically. Gender inequality is always wasteful.

The third area is corruption. For the Swedish government the fight against corruption and bribery is key to sustainable development and the fulfillment of the Agenda 2030. Corruption is devastating for the business sector and for societies. Companies are less interested in investing in countries or regions with widespread corruption. This blocks economic development and undermines democracy.

Governments have a responsibility to build strong institutions, support the rule of law, and implement legislation on anti-corruption. In the Swedish Government's Drive for Democracy, an initiative aimed at responding to recent threats and challenges to democracy, fighting corruption is an important component.

The fourth area is Global Value Chains. Global value chains are a key component of the globalized economy, and they must be sustainable in all their parts. A chain is only as strong as its weakest link. In global trade, a chain of production can only be considered responsible and sustainable if it is so every step of the way.

We believe the Agenda 2030 presents a golden opportunity to gather the private sector to further develop ways to ensure that these global value chains respect human rights.

The fifth area is National Action Plans. It is essential for every country to implement and follow up National Action Plans for Business and Human Rights, in order to implement the United Nations Guiding Principles on Business and Human Rights. Sweden supports countries in Asia and the Pacific in this regard. I am pleased to see that Thailand has developed a National Action Plan and I would like to congratulate Thailand on being the first country in Asia to adopt a Plan.

The Swedish National Action Plan, launched in 2015, was followed-up in 2018 with a report on recommendations. Now, we are taking the National Action Plan one step further by launching a Swedish Platform for International Sustainable Business. We want to further improve our work in this field by developing one unified platform for Government initiatives.

The sixth area is about Sustainability Reporting. The EU demands sustainability reporting for all companies having more than 500 employees. We have strengthened this requirement in our national legislation. In Sweden, we require all companies having 250 employees or more to provide a sustainable development report.

This was important to spark change and awareness in an initial phase. But today many Swedish businesses are proactive and have

placed sustainability in their core business model. They now have extensive sustainability reporting – beyond legislation requirements – to boost the companies' business and shareholder value.

Consumers demand socially responsible production and companies take own initiatives to improve sustainability. Government action was necessary as a catalyst of change, but when the demand comes from consumers and markets it gets so much stronger.

The seventh area is state-owned companies, which must be role models in terms of sustainable business. The Swedish government has therefore made human rights an integral part of the corporate governance of Swedish state-owned enterprises by strengthening the follow-up of the UN's guiding principles. We have introduced crystal clear requirements in the state ownership policy, skill-enhancing measures and improved tracking of the companies' work in this field.

Lastly, our government will soon launch our new Export- and Investment Strategy. When we devised this strategy, it was clear to us that Sustainable Business would have to be at its absolute core. Sweden wants to show that trade is compatible with sustainability and respect for human rights. Sustainability is not an obstacle for trade, it will enhance trade. A sustainable business sector, with human rights as a corner stone, is absolutely necessary for any country's future welfare.

Thank you!

Here, the emerging role of the state sector in the governance of the human rights consequences of business activities emerges clearly.

First, the state embraces, as it should, a 1st Pillar UNGP "commitment to protect and fulfil human rights." Yet that commitment to protect and fulfill is undertaken through a leadership role. Consider what that means in terms of both the

mechanics of leadership (politics) and its characteristics (politics and structural baselines). Political parties, and vanguard elements of social forces undertake leadership roles. Leninist parties are tasked with guiding the state and administrative apparatus. But in this area, states are viewed primarily as the nexus of the highest expression of sovereign (and thus legitimate--a point NGOs in favor of the Comprehensive treaty never tire of reminding the rest of us) authority--law. That was the point of the 1st Pillar in large respect--to remind states of their duty to undertake through their own domestic legal orders the substantive duties they had embraced (to the extent they felt like it) of their international obligations along with or as a supplement to the human rights structures already framed within their constitutional orders.

That, however, is not what the Swedish Trade Minister has in mind. In place of law, she centers (as she must) the techniques of regulatory governance, of markets, and in the process de-centers the state (and law) as a normative foundation. In its place, a "smart mix" shifts normative and operational authority to the enterprise (along with the international community as the generator of norms, not binding on the state but rather on the operations of its enterprises) leaving the state in the role of the celestial clockmaker⁴⁰ charged with the great but remote task of defending the integrity of the system it oversees. She does this in seven steps.

Second, social dialogue is an odd basis on which to build the State duty. It acquires an even odder position as the first of the principles of state leadership in a context in which communities seeking to defend rights holders have been clamoring for law--substantive law and law permitting a more realistic access to justice. It is that clamoring that has produced the rights holder protective demand for a Comprehensive business and human rights treaty.⁴¹ But the Treaty efforts, like

⁴⁰ Isaac Newton, *Philosophiae Naturalis Principia Mathematica* (S. PEPYS, Reg. Soc. PRÆSES, Julii 5. 1686) available <http://www.gutenberg.org/files/28233/28233-h/28233-h.htm>. Translated as Isaac Newton, *The Mathematical Principles of Natural Philosophy* (www.WealthOfNation.com, February 21, 2013)

⁴¹ Legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, OEIGWG Chairmanship Revised Draft 16-7-2019 available https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransC/oeigwg/oeigwg_RevisedDraft_LBI.pdf. Discussed in Carlos Lopez, "The Revised Draft of a Treaty on Business and Human Rights: A Big Leap

Professor Rath in the Blue Angel, has itself become the instrument of its own inversion, turning a project furthering the business and human rights enterprise into one centered on the glorification of key stakeholders within the constellation of global regulatory power.⁴² And this approach appears to disappoint. Indeed, this is the sort of thing one would expect to be at the heart of the 2nd Pillar--and ridiculed there. But here it appears to acquire a loftier standing. Perhaps that is because dialogue with the state is best; but that would be an odd conclusion for a human population for whom the state is a novel concept and hardly ever in accord with societal realities.

But dialogue here is meant to substitute or supersede the democratic process. That ought to give the populations of liberal democratic states pause. Does Pillar 1 permit the blatant (it has of course been inherent for a century or so) aristocratic tendency in the actualities of liberal democratic governance. Again, and again, one sees the reflex toward treating the objects of good intentions as without capacity (like children). They have no power. And this part of the speech makes that clear enough. Now transpose this pattern to the one that dominates discourse among states. . . . What one has is an invitation to dialogue based on power. And an embrace of the principle that within the mechanisms of states, the object (lawmaking) is a product of the sort of deal making in the shadow of substantive norms that is, in fact, the essence of the derided (as unaccountable) 2nd Pillar.

Third, the tendency to identify with the "causes of the month" produces the sort of sloganeering that, when produced by Marxist Leninist regimes, induces substantial criticism among the liberal democratic states whose representatives now appear unable (in turn) to resist. Sweden is a feminist state. . . Really? That is what is offered. It might have been more useful to suggest both what feminism means--hopefully as an inclusive rather than an invertive power/culture principle. Sweden has

Forward," *Opinio Juris* (15 August 2019) available <http://opiniojuris.org/2019/08/15/the-revised-draft-of-a-treaty-on-business-and-human-rights-a-big-leap-forward/>. See also Carlos Lopez, "Toward an International Convention on Business and Human Rights," *Investment Treaty News* (17 October 2018) available <https://www.iisd.org/itn/2018/10/17/toward-an-international-convention-on-business-and-human-rights-carlos-lopez/>.

⁴² Discussed in the essays in Larry Catá Backer and Flora Sapio (eds.), *Emancipating the Mind: Bulletin of the Coalition for Peace & Ethics* 14(2):149-351 (2019); Special Issue, *supra* note 32.

something to offer here, though none of it was in evidence. That, in part, is because much of the advances have come from the governmentalization of the private sector which has been given the laboring oar in developing the regulatory structures to make a robust feminism a reality--one with national characteristics (a discussion that this speech avoids).

Fourth, corruption is an area where the state has much to offer. That started, of course, with the Americans in the 1970s, with the world slowly catching up as this, too, became popularized through the normative developments (backed by loan terms) of the International Financial Institutions and their public lending policies. But still. And yet here, the centrality of the state and of law is deceptive. Anti-corruption efforts have indeed been profoundly transformative. But the transformation is essentially a consequence of compliance not directly of law. It is to compliance systems--and thus to the governmentalization of the global administration of the enterprise within the jurisdictional boundaries of its activities, that one looks to the development both of the systems of rules to combat corruption, and its implementation. That state stands aside. . . it judges, it evaluates, it holds accountable--like an electorate in a liberal democratic state. It protects the system within which such private governmentalized systems can operate, but it does not govern directly.

Fifth, the reference to global value chains makes the point. This is the operationalization of public (state driven) cultures that would make small states like Lesotho as irrelevant, and indeed as obstacles, to the proper running of global production--one grounded in the sensibilities that are better developed and transmitted from European, Western and Asian capitals, than from the sweat shop states of the world.⁴³

Sixth, the National Action Plans. I have had little good to say about National Action Plans; and that has put me on the wrong side of the herd.⁴⁴ I hope someday to be proven wrong; I expect that will be a task fraught with the likelihood of failure. What National Action Plans have wrought has been the usual tendency to export norms and compliance outward, with a sometimes substantial wall between domestic human rights regimes and those reserved for work undertaken "abroad." But worse, in this case, and I thank the Swedish Minister for being

⁴³ See *infra* discussion at §2.

⁴⁴ Backer, *Moving Forward*, *supra* note 4.

so open, is the inherent issues of hegemony that the National Action Plan project has been engendering. Just as it went without notice that the Norwegian Pension Fund Global and its US NGO Consultant could effectively treat Lesotho as nonexistent with respect to human rights harms occurring within its territory, so Sweden can speak to the way that it helps capacity poor states develop appropriate NAPS to suit the times and their direction. For those who started off life in the global South, the spectacle of parading the Thai's around as an example of a success might not have brought Sweden the reaction it thought it was entitled to obtain for this "good work." But worse, these NAPS also center their work on compliance--that is they delegate responsibility to the private sector to actually do the work. And in the process accelerate the movement of regulatory power (and control) from the state to the 2nd Pillar enterprises.

Seventh, sustainability reporting is to be welcomed. And indeed, the entire project of fusing the human rights, climate change, and sustainability projects is long overdue. But a combination of turf protection and inertia (regulatory and administrative drag as well) plagues this project. Still it was warming to see it mentioned. But less warming to see it fractured along national lines. Sustainability is not a state project; climate change does not change its character at the borders of states. And yet a program that creates incentives toward national programs might have perversely bad effects. But that is not what they are after. Putting this point together with the previous, what one sees here is an effort to use what Professor Ruggie references as "leverage" (see below in this essay), by seeking to legislate the framework within which enterprises will develop global governance regimes the baseline of which will be determined by the regulatory framework of the regulating (usually home) state. Here again one sees a 1st Pillar power assertion bounded by its ability to activate 2nd Pillar power.

Eighth, SOEs remain an important element of 1st Pillar power. But in essence, given the ideology of OECD states, more a 2nd Pillar issue. Here one deals with the state as shareholder--another aspect of privatization. And one deals with the public role of state projections of power in private markets--again bounded by OECD ideologies. And yet, what the state applies to its own enterprises as a shareholder could as easily be applied to all of its enterprises as legal expectations. The gap is more an

affectation than a reality--and yet a useful one for states reluctant to legislate.

Ninth, investment strategies. Here Sweden can do a lot of good. But that good is as a bank with a public conscience. Again, the Minister speaks the language of compliance, and it undertakes implementation through the markets driven world of lending. One is back in the world of the 2nd Pillar with the state as a powerful partner. But it is the world of the 2nd Pillar none the less.

And, indeed, the eight points of the Swedish minister points to the fundamental problem of the 8th Forum theme: a truly robust 1st Pillar would effectively require the abandonment of markets in favor of central planning regimes. Ironically, the only states in the global now capable of a profoundly robust engagement with the 1st Pillar are Cuba and North Korea. To embrace the market—as global actors have robustly embraced it over the last generation to build the current trade order--is to have to acknowledge that it has produced a great transformation in the role of the state, and the role of law in the management of economic activity now organized along global production chains. "Smart mix" in that context inevitably leads away from the effective deployment of the ideology of the state around which the mythologies of the 1st Pillar are built.

As John Ruggie recently, perhaps inadvertently, underlined in his much read and important Keynote Address Conference on Business and Human Rights:⁴⁵

The conference agenda asks the question: How do we most effectively advance action on the EU level? My job this morning is to sketch out the backstory to our discussions and suggest some strategic directions.

Let me begin with the most basic question: what is business and human rights all about? The

⁴⁵ John G. Ruggie, "Keynote Address, Conference on Business and Human Rights: Towards a Common Agenda for Action", organized by Finland's Presidency of the EU Council, Brussels, Belgium 2 December 2019 available

https://www.shiftproject.org/media/JohnRuggie_FinlandConferenceBHR_2Dec2019_vFinal.pdf.

answer varies depending on vantage point. In big-picture terms, it is about the social sustainability of globalization. . . .

When seen from the perspective of enterprises, business and human rights is about ways they can recover trust and manage the risk of harmful impacts. . . . For governments, business and human rights is at the core of new social contracts they need to construct for and with their populations. . . .

For the individual person whose rights are impacted by enterprises, business and human rights is about nothing more – but also nothing less – than being treated with respect, no matter who they are and whatever their station in life may be, and to obtain remedy where harm is done.

My second point is to remind us that formal international recognition of business and human rights as a distinct policy domain is relatively recent. At the UN level, the first and thus far only formal recognition dates to 2011, when the Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights. . . .

That brings me to the key issue of strategy – how to reinforce and add to this transformative dynamic. The Guiding Principles embody two core strategic concepts: advocating a “smart mix of measures,” and using “leverage.” I’ll take them up in turn.

We often hear the term “smart mix of measures” being employed to mean voluntary measures alone. But that gets it wrong. Guiding Principle 1 says that states must have effective legislation and regulation in place to protect against human rights harm by businesses. Guiding Principle 3 adds that states should periodically review the adequacy of such measures and update them if necessary. They should also ensure that related areas of law, for example corporate law and

securities regulation, do not constrain but enable business respect for human rights. So, a smart mix means exactly what it says: a combination of voluntary and mandatory, as well as national and international measures.

A number of EU member states and the EU as a whole have begun to put in place mandatory measures that reinforce what previously was voluntary guidance to firms on corporate responsibility. These include reporting requirements regarding modern slavery, conflict minerals, and non-financial performance more broadly, as well as human rights and environmental due diligence. Such initiatives are aligned with the spirit of the UNGPs, and they are important steps in adding “mandatory measures” into the mix. Still, many leave a lot to the imagination – of company staff, consulting firms, and civil society actors among others. More should be done to specify what meaningful implementation looks like, in order to avoid contributing to the proliferation of self-defined standards and storytelling by firms. Also, with limited exceptions currently no direct consequences follow from non-compliance. Nevertheless, the ascent of Pillar I is underway.

Professor Ruggie’s elegant analysis partially points in the right direction. And perhaps that is necessarily an inevitable consequence of an approach that has, to a necessary extent, continued to seek to center the state—understood as the community of states as horizontally equal partners--but in reality nudging toward the use of the 1st Pillar as the cover under which the home states of the great global production chains can (as he suggests) use their leverage to develop regulatory chains extending down into and obliterating any sense of partnership among states.⁴⁶

What all of these movements toward “smart mixes” and legal pluralism signify;

⁴⁶ See *infra* discussion at §2.

What the trajectory toward the governmentalization of the private sphere and the legalization of its governance;

What the centering of the state as the administrative unit overseeing structures of accountability beyond its ability to directly regulate by traditional means;

What the mix that is at the heart of the re-branded 1st Pillar strategy appears to be is this?:

The focus on the state (with exceptional variations for the "great states" the U.S. and China, and with a "moral exception for the incarnation of internationalization that the EU continues to hope to represent) is not meant to amount so much to the centering of the state within the 1st Pillar of the UNGP. Instead it heralds the triumph of the 2nd Pillar and its capture of the state in ways that are palatable to the ideologies of conventional state supremacy (at least among those states already subject to the "leverage" of the "big 3"--US-China-EU). The object, again, is to keep those at the bottom happy with, and to offer a hopeful rationalization, of their (inevitable) position in global power chains. For that, at the end, is all there is.

And here again we come to the great insight that can be derived from *The Blue Angel*: at the end, neither Professor Rath nor Lola Lola can be anything but what they are. And that is what they will be. But the students, the cabaret goers, the orchestra, that is all those who shift between gymnasium and cabaret, those who work in and for the cabaret and the gymnasium, those who function in the society around which professor, dancer, and students can rationalize their lives, those who make use of Rath and Lola Lola, play a role. It is to those actors that the emerging social order belongs. And to be somewhat tiresome about the meaning:

In a world in which one accepts the primacy of international law and the compulsion of international norms (however manifested to the extent they have societal weight), but which also is profoundly tied to the state as the apex source of political legitimacy, and yet recognizes the realities of governance through enterprises that may be constituted to mirror the state and which may be called up on to develop binding regulatory structures, and compliance mechanisms extending down their chain of control and up to the states to

which they might be held accountability for the quality of their legal structures and the efficacy of their implementation, there is an inevitable consequence. That consequence suggests that the application of these principles produces a governance orthodoxy the operation of which requires the state (not all states but dependent states) to cede both their regulatory primacy and its role as the center of the institutional framework for the management of global business.

That is the vision that our Swedish Trade Minister and John Ruggie would appear to have us embrace. That is also a vision profoundly at odds with the traditional reading of the 8th Forum's theme. But perhaps, the view of Lola Lola, "can't help it." The alternative, of course, is not Lola Lola, but that very European avatar of itself—Lulu.⁴⁷ It is to that which I will turn to in discussing the next generation state based mandatory due diligence laws.

4. Conclusion

U was delighted to have been able to attend a portion of the 8th UN Forum for Business and Human Rights. I have been reflecting on the lessons learned and the directions toward which that great assembly of states, enterprises, NGOs and academics would have us all journey.

That journey, of course, was wrapped up nicely in the 2019 Forum theme—*Time to act: Governments as catalysts for business respect for human rights*. For me, the theme produced a substantial irony, an irony that serves as the focus of the brief comments offered here on the state of the art in business and human rights and the perversity that it appears to foster as it lumbers along propelled by its own quite incomprehensible internal logic (at worst perhaps comprehensible in the sense that it fails to understand the consequences of the choices it

⁴⁷ Alban Berg, *Lulu* (1929-35) Opera in 3 Acts, libretto adapted from Frank Wedekind, *Erdegeist* (Earth Spirit, 1895) and *Die Büchse der Pandora* (Pandora's Box, 1904). See generally, Theodor W. Adorno, *Alban Berg, Master of the Smallest Link* (Juliane Brand, and Christopher Haley (trans.) Cambridge, England: Cambridge University Press, 1991), pp. 120-136. This is a story of the unconscious but quite deliberate contradiction of abstraction and principle in the face of a hostile world in which the only possible outcome is sometimes violent engagement, misunderstanding, inversion, and (self) destruction.

appears to favor). It reminds us that ideological stances produce some time quite absurd results. And absurdity was the order of the day, at least for the positions taken by some of the leading states in this field.

These observations were divided into two parts. The first part, *Reflections on the 8th U.N. Forum on Business and Human Rights—Part I, "Does Lesotho Exist?"*, considered the reactionary character of progressive approaches to the enterprise of business and human rights. The 8th Forum nicely encapsulated the way that the drive toward the legalization of the 2nd Pillar corporate responsibility actually produces a new sort of imperial system with human rights at its center and a confederation of --wait for it--states which formed the family of "civilized nations" as they were constituted in 1900 again appear take a leading position. For all other states there is, well, nothing. They disappear in the shadows of the sunshine cast by this Olympian cartel of states. The irony that appears to emerge out of the 8th Forum in this respect that the drive to center the state actually divides states into those that count and those that are slated, effectively, for oblivion--resurrected only when necessary to hide the reality that the system of horizontal parity among states created after 1945 is being substantially transformed. Make no mistake, is not about Western privilege (though that trope is always useful in the corridors of Geneva, and New York or wherever it is deemed useful to manufacture a strategic reality for the voting masses); rather it is about power—the divide is between rich states from which global production is controlled or centered, and those states (the rest) whose people and resources serve them. And in the process, those serving states lose effectively their coherence as states (resurrected only for the photo-op sessions that the UN system can ably arrange.

The second part was built around and as an homage to that marvelous inter-war German movie, "The Blue Angel."⁴⁸ The movie is about the way that a society at its apex inverts itself on the contradictions of its own good intentions, is again at the heart of the business and human rights enterprise illustrated within the Forum framework. Entitled '*Falling in Love Again: Smart Mixes and the De-Centering of the State Within Private Compliance Governance Orders*', explores the way the

⁴⁸ "The Blue Angel," *supra*.

framework for this *emerging imperium* actually has a far more interesting effect. The effect becomes more interesting when measured against the objectives expressed in the 8th Forum's theme. One would think, on the basis of the expected consequences of the building of vertically arranged power structures in which principal states oversee the economic activities (through their instrumentalities) of activities undertaken by them throughout their production chains, that the Forum theme would thereby be furthered. Here, at last, one might expect to see fulfilled the objectives that these states (and dominant society intelligentsia) had sought for a long time. That would be a regulatory structure driven by the law of the most powerful states and enforced through their judicial structures, now serving the higher cause of (still badly defined) international human rights.

Yet, rather than returning power to the states who play a leading role in the manifestation of a human-rights controlling imperial cartel, it has the effect of dissipating that authority. States, effectively incapable of actually managing human rights through law, transform the role of law as a constituting element of legal orders that are actually delegated to enterprises (or better put delegated to the global production chains). As a consequence, the state itself disappears within the logic of the structures of its own approach to law into the vast data driven compliance machinery that the vanguard states have been furiously constructing (with the complicity of the largest enterprises) over the last generation.

Together, both perspectives on the 8th UN Forum for Business and Human Rights sketch out one of the great absurdities of the current approach to the regulation of business and human rights--the great campaign of national regulation the results of which accelerate the process of privatizing law by governmentalizing the largest enterprises--delegating to them the functional role of the state in the management of the human rights effects of economic activities within global production. Perhaps that is as it should be. I have certainly been arguing this position since before many of the current crop of elite influence leaders learned to connect state-enterprise-human rights.⁴⁹ But in the process, and in an effort--essentially

⁴⁹ Explored in Larry Catá Backer, (e.g., *From Moral Obligation to International Law*, Geo. J. Int'l L. 39(4):591-653 (2008) available https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1112882.

reactionary--to revitalize the state as the source of control, and law as the language and structure through which such obligations are implemented, these "leading forces" of human rights change have essentially produced a mechanism through which the core power of the state will be obliterated, all the while preserving an increasingly fragile facade of state power.

B. Article 3

“Peaches and Plums do not Speak, but they are so Attractive that a Path is Formed Below the trees” [桃李不言，下自成蹊]: China’s Belt and Road Initiative and the United Nations Guiding Principles for Business and Human Rights

Remarks Delivered at the 8th United Nations Forum for Business and Human Rights, 26 November 2019

Larry Catá Backer

I1. Introduction

The UN Working Group on Business and Human Rights organized a session for the 8th U.N. Forum entitled *Building sustainable infrastructure: Lessons from the Belt and Road Initiative and other similar multi-state initiatives*.¹ It was chaired by Surya Deva, a Member, UN Working Group on Business and Human Rights. Session participants include Mohamed Athman (Save Lamu); Larry Catá Backer (Penn State University); Flora Sapio (Università degli Studi di Napoli “L’Orientale”); and Wawa Wang (Sustainable Energy). The Session took place Tuesday 26 November 2020. We hope to see many of you there. The Session Concept Note²

¹ Information about the Session available at the U.N. 8th Forum website, <https://2019unforumbhr.sched.com/event/U9Ei>.

² See Background Note, <https://2019unforumbhr.sched.com/event/U9Ei>. It provided in relevant part:

Effective implementation of the UNGPs in the context of the infrastructure development underway across all regions has the potential to make a significant positive contribution to the

What follows is the text of the Remarks delivered by Larry Catá Backer for the Coalition for Peace and Ethics. The remarks are entitled: “Peaches and Plums do not Speak, but they are so Attractive that a Path is Formed Below the trees” [桃李不言，下自成蹊]: China’s Belt and Road Initiative and the United Nations Guiding Principles for Business and Human Rights. As its title suggests, the remarks consider the points of necessary convergence between the emerging and robust system of global trade being developed by China through its Belt and Road Initiative and the normative framework of the UN Guiding Principle. The suggestion is made that points of convergence as well as challenges to both systems for the necessary task of building a win-win common future. The Remarks, which follow, have been slightly edited and lightly footnoted.

2. Remarks

Distinguished members of governments, of the Office of the High Commissioner for Human Rights, and of public international organizations; Esteemed members of the UN Working Group for Business and Human Rights; Valued representatives of economic enterprises, and of non-governmental organizations whose respective service to the world order is acknowledged with deep appreciation; Colleagues from academic institutions worldwide; Ladies and Gentlemen; Dear Friends:

At the opening ceremony of the Belt and Road Forum for International Cooperation, held in Beijing May 2017, Chinese President Xi Jinping described China’s Belt and Road Initiative and the international community’s subsequent support and involvement with a most astute reference to the well-known

realization of the SDGs. . . . The UNGPs provide a robust framework for both host and home States as well as all involved businesses enterprises to manage these concerns in consultation with affected stakeholders. . . . Infrastructure development is a key component of the Belt and Road Initiative (BRI). Other similar multi-state mega infrastructure development initiatives are emerging. The recently announced Blue Dot Network is a case in point. The session aims to explore lessons from – and for – these multi-state mega infrastructure development initiatives, and to identify what implementing the UNGPs would imply in practical terms for infrastructure projects under these initiatives.

Chinese saying: “peaches and plums do not speak, but they are so attractive that a path is created below the trees” [桃李不言，下自成蹊].³ President Xi might have meant to suggest that there is no need to argue about the abstract merits of BRI; rather China’s positive role in developing this new era global trade framework will naturally lead other states to participate. And, indeed, since 2013 the world has been eager to construct a path to China as a new global trading center and has enthusiastically tasted the peaches and plums in China’s orchard. Yet President Xi was wise enough in using that ancient expression to note that it speaks not merely to peaches but also to plums, that is to the combination of good moral merits and character. It is the combination of peaches and plums that together produce an orchard rich enough to draw and sustain the world.

At the same time, one of the ancient thirty-six stratagems reminds us, in its section on enemy dealing strategies, that one should be prepared to “sacrifice the plum tree to preserve the peach tree.”⁴ Here the garden of peaches and plums takes on a different character—both are necessary but now distinct and complementary, and where both are attacked it may be necessary to sacrifice one to preserve the garden. And yet, while the peaches survive, the garden itself becomes far poorer, and the path built to it may ultimately be abandoned.

And that insight nicely describes the essence of my task here today: For in the global garden of productive interaction, it is possible to suggest that the peach orchard of the Chinese Belt and Road is made infinitely more productive, and the path beaten to its precincts made substantially more sustainable, where the peach trees of the Chinese Belt and Road Initiative are planted firmly and resolutely beside the great plums trees of the United Nations Guiding Principles for Human Rights. Sacrificing plums to preserve peaches may be a useful stratagem in some instances, but it will threaten the success of a garden dependent on both.

To that end I take as inspiration President Xi’s reference, made during the course of his speech at the 2nd Belt and Road Forum

³ Xi Jinping, “Full text of President Xi’s speech at opening of Belt and Road forum,” Xinhua News Agency (14 May 2017) available http://www.xinhuanet.com/english/2017-05/14/c_136282982.htm.

⁴ Thirty Six Stratagems available (in English) https://military.wikia.org/wiki/Thirty_Six_Stratagems.

for International Cooperation in April 2019, to the Chinese saying: “The ceaseless inflow of rivers makes the ocean deep.” In that context he noted that “were such inflow to be cut, the ocean, however big, would eventually dry up.”⁵ We can only agree. The rivers of international trade flowing into China are fed by the great sources of its international normative and human rights structures. Were these cut off, there would be little left to feed an ocean with many inlets and no outlets.

In this global garden of peaches and plums let us first consider our peach tree—the Belt and Road Initiative.

BRI represents the framework through which China and its vanguard, the Chinese Communist Party, rationalizes its trade, security, cultural, and political policies. That rationalization seeks a framework for the seamless and coherent connection between China’s internal and external relations. It serves both as the outward expression of the core of the Basic Line of the Chinese Communist Party as the leadership collective of the nation, as well as the current manifestation of that Basic Line as the principles of the “New Era” theory developed by the current leadership core of the Chinese State and its Communist Party collective, which along with the elements of the United Front, represents the collective of the Chinese nation.

That representation extends beyond economics to politics, culture, and societal cohesion. It represents the outward expression of the Twelve Core Socialist Values and its implementation through the five principles of Peaceful Coexistence: mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other’s internal affairs, equality and mutual benefit, and peaceful coexistence. To understand the BRI, it is first necessary to understand the central role of Marxism in the construction of Chinese political-economy.

It is then necessary, as Xi Jinping stated in a speech given at the fifth collective study of the 19th Central Political Bureau on April 23, 2018, to situate Marxism with Chinese characteristics at the core of China’s global collective leadership. This is a moral-political,

⁵ “Xi Jinping Chairs and Addresses the Leaders’ Roundtable of the Second Belt and Road Forum for International Cooperation (BRF)” 2nd Belt and Road Forum for International Cooperation (28 April 2019) available <http://www.beltandroadforum.org/english/n100/2019/0429/c22-1392.html>.

as well as an economic project. As President Xi also noted: The Communist Manifesto, with Chinese characteristics, “pointed out that communism is not a narrow regional movement, the proletariat. To achieve complete liberation, it is necessary to liberate all mankind and call on the proletarians of the world to unite. This provides a scientific and theoretical basis for Marxist parties to embrace the world, benefit mankind, and jointly create a better world.”

Within this broader foundational outlook, BRI is meant to be the manifestation of outbound cooperation in a number of key areas. These areas have included, since 2015: policy coordination, facilities connectivity, integrated transport infrastructure construction, connectivity in energy infrastructure, communication infrastructure, investment and trade cooperation, enhanced customs cooperation, and mutual recognition and coordination of standard setting, the development of a united front in the context of developing policy within the global trade community, coordinated trade innovation, investment facilitation, cooperation in agriculture, forestry and animal husbandry, and in the exploration of coal, oil, gas, metal minerals and other conventional energy sources; as well as emerging renewable sources.⁶

With this in mind it is possible to turn to the legal, security, cultural, and infrastructure development aspects of the formation of BRI.

The legal and operational characteristics of BRI are then easy to describe.

As a legal construct, BRI can be understood as the aggregation of an increasing number of bi-lateral and multi-lateral trade, friendship, and cooperation agreements between foreign states and China. BRI does not yet embrace such formal arrangements between foreign states without China at the center. These formal arrangements are meant to make it possible to manifest and work toward the fulfillment of the key aspirational policies of BRI: “They should promote policy coordination, facilities

⁶ Belt and Road Cooperation: For a Better World: Report on the Finding and Recommendations from the First Meeting of the Advisory Council of the Belt and Road Forum for International Cooperation (10 April 2019) available https://www.fmprc.gov.cn/web/wjbxw_673019/W020190424305940595582.pdf.

connectivity, unimpeded trade, financial integration and people-to-people bonds as their five major goals.”⁷

At the same time, these formal instruments are augmented by a growing set of informal mechanisms. Prominent among them are Memoranda of Understanding among China and her BRI partners. Lamentably, most are not transparent. These contain, it is mostly surmised, a set of more specific country to country framework arrangements for the operationalization of BRI principles within a more specific context.

Internally, BRI is overseen in China by the Leading Group for advancing the Development of One Belt One Road, formed in 2014. Its steering committee reports directly into the State Council of the People's Republic of China. Externally, China's BRI partners have under the leadership of China, undertaken a set of informal structures aimed at coordination. Beyond that, little is known, though each individual state, in their relations with China, is free to undertake its own approach to the internationalization of BRI within their national territory.

As a set of security arrangements, BRI is connected to the Shanghai Cooperation Organization. But the Shanghai Cooperation Organization is merely meant to be one of many mechanisms that enhance multilateral cooperation. These entities tend to layer the policies, principles and objectives more broadly conceived in BRI but targeted to the specific context for which they were created.

As a mechanism for bringing people closer together, BRI is also understood to be the framework within which China and her partners develop closer ties. It is understood to fall within several distinct categories.

The first includes people to people exchanges with the objective of enhancing BRI economic and political cooperation. These have included since 2015 “cultural and academic exchanges, personnel exchanges and cooperation, media cooperation, youth and women exchanges and volunteer services, so as to

⁷ “Vision and Actions on Jointly Building Silk Road Economic Belt and 21st Century Maritime Silk Road, In *China's Belt and Road Initiatives: Economic Geography Reformation* 157-170, 164 (Wei Liu, ed., Springer, 2018).

win public support for deepening bilateral and multilateral cooperation.”⁸

The second includes a series of measures designed to enhance intra-BRI tourism

The third includes scientific and technical cooperation. These include the development of joint research centers. It also includes integration of programs in aid of economic development, including entrepreneurship and the like.

The fourth includes broad array of mechanisms for enhanced political communication. The objects of these projects include political parties, legislative bodies sister city programs and the like.

Finally, and most importantly, BRI serves as the conceptual framework around which the core objective of enhancing regional connectivity and development may be furthered. It consists of a series of evolving mechanisms for developing and financing infrastructure projects. But infrastructure projects are merely to be understood as the necessary first stage of the larger project of bringing like-minded groups of states together by solving the world’s infrastructure gap. The elimination of those gaps forms the heart of the infrastructure-centered development of what are popularly called the Silk Roads from and through China. These include the Land Silk Road connecting China through Asia to Europe; the Maritime Silk Road that connects states along ancient sea routes between Asia, Africa and Europe—along with the Americas. An ice silk road anticipated over the North Pole region, and perhaps even a space and internet road also may be included within the BRI’s goals.

These projects, then, serve as the physical manifestation of the Silk Road envisioned by President Xi publicly since 2013. They are manifested by a series of development and financing arrangements between China and its BRI partners. But such activity is also internationalized within the Asia Investment and Infrastructure Bank (AIIB). The initial focus has been infrastructure investment, education, construction materials, railway and highway, automobile, real estate, power grid, and

⁸ Ibid.

iron and steel. Some already estimate that total Belt and Road Initiative projects are among the largest infrastructure and investment projects in history.

And now we add the plum trees.

Just as the BRI has been intended to help bridge a critical infrastructure gap, the U.N. Guiding Principles for Business and Human Rights represents a concrete and globally embraced effort to bridge an equally important gap—a governance gap between national and international regulatory structures, between public and private law systems; and within increasingly unified chains of production and supply that themselves manifest the global regulatory silk roads.

The UN Guiding Principles are well known enough to spare me the need for more careful description. However, it is worth remembering a number of key points.

First, the UN Guiding Principles were endorsed unanimously in 2011. That endorsement included China and the United States. It must be acknowledged that the UN Guiding Principles are not strictly speaking international law, nor have their principles been mandated under international law mechanisms, nor, indeed, have they been involuntarily transposed into the domestic legal orders of states. All the same, the UN Guiding Principles themselves were consciously crafted, and thus endorsed, to reflect the key operational doctrines essential and universally embraced for framing issues of duty, responsibility and obligation of all actors touched by economic activity.

Second, the UN Guiding Principles have developed two principal framing strategies for the key actors in economic activities—states and economic organizations.

With respect to states, the UN Guiding Principles reaffirm the essence of State sovereignty within the global order. States acknowledge their already existing duties to protect human rights within the letter and spirit of their own engagement in international law and norms.

With respect to enterprises, including instrumentalities of state engaged in economic activities, the UN Guiding Principles described a private law based and coordinated system of

responsibility unified both by a core set of norms, the International Bill of Human Rights and certain ILO Conventions, as well as by the mechanisms of human rights due diligence. These apply with equal vigor to all enterprises anywhere in the world and are either tied to or restricted by the choices made in the construction of the domestic legal orders of the states in which they may operate.

With respect to individuals, the UN Guiding Principles have taken a great step toward the development of a global system of liability for harm designed to protect individuals and vulnerable communities from the effects of economic activity. This harm principle is framed in the Western language of human rights but of its essence is aligned strongly with Marxist principles of the fundamental obligation of the vanguard party in asserting its leadership role.

Third, as a consequence, it is useful to understand the UN Guiding Principles as the first truly global Belt and Road Initiative. Its silk road is paved with the principles developed by the community of nations in its multilateral organizations reflecting their mutually advantageous vision of win-win cooperation. It is paved with the blood and sacrifice of the global working class, with respect to whom both free market and Marxist political systems have long recognized obligations.

Fourth, the UN Guiding Principles have developed a set of key markers that are implicitly embedded into the principles of BRI, whose development ought to be welcomed in the spirit of BRI win-win cooperation and respect for the five principles of Peaceful Coexistence. In this context it is important to underline that the relationship between the substantive norms of BRI and the UN Guiding Principles are not constructed as a one-way street. It is as important for the Guiding Principles to embed within its interpretive scope the important cultural and moral framework of socialist values, as it is for BRI frameworks to be sensitive to the role of the UNGP in the legal and economic organization of its partners. For China and BRI, it is error to conceive of the UN Guiding Principles as a species of “unequal treaties.” At the same time, it is error for those who have responsibility for the UNGP to view them as a means of for excuse for forcing the transformation of Marxist Leninist political-economic systems and their forms of governance.

Fifth, the necessary alignments between the BRI and UN Guiding Principles are easy to identify. These extend beyond the First Pillar principles applicable to states. Let me highlight a few:

- Guiding Principle 4 (the State-Business Nexus) provides a strong foundation for developing the moral and normative framework for the operation of BRI state owned enterprises especially when they engage in economic activity outside of their home state;
- Guiding Principle 4 also serves as the foundation for incorporating appropriately framed human rights obligations of states into the working style of the great financial institutions that help drive BRI, including but not limited to the AIIB;
- Guiding Principle 6 (Public Commercial Transactions) serves as a foundation for the transposition of UN Guiding Principles sensibilities in developing relationships of integrity between the State and its enterprises. In this way China might demonstrate the way that its advanced elements of core socialist principles are compatible with the Guiding Principles. In consciously leading by doing, China can both embrace the UN Guiding Principles but help shape its meaning.
- Guiding Principle 7 (Conflict Zones) may serve as an essential template for enhancing rights based BRI activities in conflict areas. These exist within the overland and maritime Silk Roads. Again, this is an area in which BRI can by fusing its approach with the UN GP principles, can lead in the further development of both.
- Guiding Principle 8 (Ensuring Policy Coherence) can serve as the foundation for BRI development by ensuring that its core principles conform internally to the great Chinese principles and obligations to protect from harm and at the same time respect the rights based structure of such harm protections within the systems of most of its BRI partners. As the Commentary to Principle 8 suggests, “To achieve the appropriate balance, States need to take a broad approach to managing the business and human rights agenda, aimed at ensuring both vertical and horizontal domestic policy coherence.”

- And perhaps most importantly, Guiding Principle 10 which reminds states, including BRI states, that “when acting as members of multilateral institutions that deal with business related issues, they should ensure the embedding of the great principles of the UNGP throughout the scope of the work of those institutions. There is no better place to affirm the close connection between the principles of BRI and UNGP than through the elaboration of UNGP sensitive BRI policy, and practice. As Principle 10(c) instructs: states should draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.” BRI provides a great opportunity for capacity building of the conjunction of human rights principles with Chinese characteristics alongside those embraced in the UNGP, respectful of the sensitivities of all BRI states within BRI production chains.

Beyond these, BRI serves as an excellent workshop for the development of socialist human rights due diligence systems. These might combine the core socialist values developed by a Chinese core with the collective premises of due diligence and its sensitivities derived from the Guiding Principles’ 2nd Pillar.

There is much more, of course. But even this small listing provides substantial evidence of the rich possibilities when the Chinese peach tree is grown alongside the UN Guiding Principles plums.

Sixth, these alignments between BRI and the UN Guiding Principles present for China and the BRI community the same challenges that the BRI presents for non-BRI trading and cooperation systems. And yet, the challenges are made easier to meet through a process of contextual embedding. This involves the translation of the UN Guiding Principles into the language of the political principles of adhering states and its firm and resolute adoption both by BRI states and by those enterprises operating within it.

Seventh, it is then possible to conceive of a Marxist-Leninist context for the elaboration of the principles of the UN Guiding Principles. It is also possible to align the effects and practices in

ways that make such transition compatible with the application by the global community of states and enterprises as a whole. For China, the project might well start with the alignment of BRI with the principles already announced by the Central Committee of the Communist Party of China in October 2019 in its *Outline of the Implementation of the Construction of the Moral Citizen in the New Era*.⁹

Eighth, the opportunity to carefully and consciously align BRI with the UN Guiding principles presents China and the BRI community the opportunity to lead by example. The natural connection between the high principles of BRI and the framing principles of the UNGP can produce a model for multi-lateral activity that substantially advances the great objectives of both. Together, each is stronger than apart.

And ninth, my last and perhaps most important point. The development of BRI is at a crucial stage of development. It finds itself at the point where its expression of scientific Marxist universalism, as Xi Jinping noted, as a “theoretical basis for Marxist parties to embrace the world, benefit mankind, and jointly create a better world”¹⁰ must be aligned with the Enlightenment rational scientific development of law expressed in international human rights instruments. That alignment is essential where BRI operates in the world and in the territories of others. This presents an important opportunity for China to practice its high ideals proactively in its development of Marxist universalism compatible with the deeply held norms of the people with which it interacts. And that alignment will come willingly or not. Cases such as *Chandler v Cape plc*¹¹ and

⁹ 中共中央 国务院印发 《新时代公民道德建设实施纲要》 新华社 available http://www.gov.cn/zhengce/2019-10/27/content_5445556.htm.

¹⁰ 习近平 学习马克思主义基本理论是共产党人的必修课 [Xi Jinping: “Learning the basic theory of Marxism is a compulsory course for communists”] available http://www.qstheory.cn/dukan/qs/2019-11/15/c_1125234267.htm?fbclid=IwAR0F4WCJ_60bjJOJ5yr714I9B7yZlgvtPUSxwjIBjZWtj0vwgpkKgXs3xd0M; discussed in Larry Catá Backer, Xi, “Learning the basic theory of Marxism is a compulsory course for communists,” *Law at the End of the Day* (23 November 2019) available <https://lcbackerblog.blogspot.com/2019/11/xi-jinping-learning-basic-theory-of.html#more>.

¹¹ *Chandler v Cape Plc* [2012] EWCA Civ 525 (25 April 2012) available <https://www.bailii.org/ew/cases/EWCA/Civ/2012/525.html>.

*Lungowe v Vedanta Resources plc*¹² already suggest the emerging framework through which the activities of BRI enterprises might well be reached, eventually perhaps into the Chinese heartland. The better strategy might be to cultivate these within BRI rather than to be engulfed by them, or worse, to try to root them out through oppositional political action.

Dear Friends

China is leading the way in advancing a set of the normative principles of respect, cooperation, win-win result and sustainability through which to engage in activities of global concern. The 2018 Chinese BRI related Statement on China's Arctic Policy¹³, issued January 2018 nicely frames them in terms of respect:

Respect should be reciprocal. It means all States should abide by international treaties . . . as well as general international law. They should respect the sovereignty, sovereign rights, and jurisdiction enjoyed by the Arctic States in this region, respect the tradition and culture of the indigenous peoples, as well as respect the rights and freedom of non-Arctic States to carry out activities in this region in accordance with the law, and respect the overall interests of the international community in the Arctic.

These principles of respect, cooperation, win-win result and sustainability are also at the heart of the UN Guiding Principles.

Like the peach and plum trees in our global garden, BRI and UNGP must be planted together, grow together, and lean on each other to ensure that the global community will find them so attractive, in a sustained and sustainable state of reciprocal and respectful win-win cooperation, that they will together help form the path beneath these trees. To that end it is necessary both to avoid the stratagem of sacrificing the plum to save the peach, and to be mindful that such sacrifice might well cut the ocean from the many streams from which it feeds. It is in that

¹² *Vedanta Resources PLC & Anor v Lungowe & Ors* [2019] UKSC 20 (10 April 2019) available <https://www.bailii.org/uk/cases/UKSC/2019/20.html>.

¹³ Information Office of the State Council of the People's Republic of China, China's Arctic Policy (26 January 2018) available <https://eng.yidaiyilu.gov.cn/zchj/qwfb/46076.htm>.

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at the 8th UN Forum

B. Remarks Delivered

spirit that both BRI and the UNGP will grow together to forge the sort of socialist win-win respectful alternative to which President Xi, and the friends of the UNGP, have both embraced.

Thank you.

C. Article 1

Introduction: From “the Song of the Young Phoenix on the Tong Tree” to “the Peng Bird Riding High and Flying for Nine Thousand Li”: Toward New Era Thought From Reform and Opening Up in the Speeches of Xi Jinping (18 December 2018) and Xi Zhongxun (3 May 1986)

Flora Sapio and Larry Catá Backer

China’s Reform and Opening Up Initiative has proven to be one of the most ambitious and successful governmental programs of the post 1945 era. In some respects, it may be understood to be every bit as profoundly transformative as the projects of the United States and its Allies after 1945 to construct a new world order based on the core principles of free movement of goods, investment, capital, and to a limited extent, people.

At the same time, just as globalization aligned with markets and principles of liberal democracy, this most advanced manifestation of the Allied post-1945 project was challenged in tandem with its success, so, too, Reform and Opening Up became an object of study and transformation in the form of New Era Thought.¹ In both cases, the success of the great projects of the political-economic models of (Chinese) Marxist-Leninism and (Anglo-European) markets based liberal democracy produced a crisis of confidence in its fundamental operation and a move toward reform. That reform movement became more intense as elites in both systems began to embrace the belief that the post-1945 era was quickly receding into

¹ For a brief recounting of that history from Chinese official sources, see, “Xi Focus: Xi Jinping and China’s new era,” *Xinhua* (30 September 2019) available http://www.xinhuanet.com/english/2019-09/30/c_138437362.htm.

history, and that new sensibilities and measures were required to maintain systemic authority under changed historical circumstances.

Much of this tension—of a great respect for successful foundations, and a sense of the necessity for reform, are evident in one of the more important speeches of Xi Jinping's leadership, his speech celebrating the 40th Anniversary of Reform and Opening Up. The remarks--在庆祝改革开放 40 周年大会上的讲话--were delivered at the end of 2018.² At the time there was some anticipation of what the speech might signal, especially among leaders in the political and business sectors who would likely be substantially affected by an anticipated evolution of the Chinese political-economic model.

At the time, and as is now customary for the consumption of such remarks, the speech received a short but intense burst of interest contextualized within the constraints of the hopes, fears and strategic objectives of those who are in the business of reading and presenting such matters to the public, and in that way of using these to shape the various political narratives that manage local popular opinion. Its greatest utility at the time appeared to be oracular. However, in lieu of examining its entrails, the oracular priesthood chose instead to reduce the words of the remarks to data and then to extract meaning by summing repeated "key words." And, indeed, there were lots of repetition to consider. "In his speech, Xi Jinping mentioned the names of six people: Mao Zedong, Deng Xiaoping, Jiang Zemin, Hu Jintao, Marx and Lenin."³

At the time, the Hong Kong press noted that

Xi did not directly address the specific challenges facing the world's second biggest economy or touch on sensitive issues such as the ongoing trade war with the US. Instead, Xi spent much of the hour-and-a-half speech drawing general

² 习近平：在庆祝改革开放 40 周年大会上的讲话 2018-12-18 19:49:04 来源：新华网 available http://www.xinhuanet.com/politics/leaders/2018-12/18/c_1123872025.htm.

³ Qiang Gang, "Reading Xi's Reform Anniversary Speech," *China Media Project* (18 December 2018) available <http://chinamediaproject.org/2018/12/18/reading-xis-reform-anniversary-speech/> (including graph of the total appearances of each name in the text of the speech).

conclusions about China's economic and social development in the past four decades since Deng Xiaoping, China's former paramount leader, started to embrace market-oriented changes in China.⁴

That produced disappointment in the global press as well,⁵ along with a small drop in Chinese financial markets.⁶

"The reason why everybody was watching this speech so closely is that they were looking for hints of any possible concessions that Xi was prepared to make to try and ease the current trade friction with the US," said Brown, noting Beijing's recent agreement to buy more soybeans from the US and reduce tariffs on US cars. "Those concessions didn't happen, other than a vague promise from Xi for China's economic reforms that began 40 years ago to continue," he added. "More, this was a speech about China's identity and position in the world."⁷

And that, certainly, was a plausible way to read speeches like this. That, at any rate is the way that Western commentators, academics, and policymakers, tend to approach speeches from the highest levels of the Chinese Communist Party. But such speeches, unlike uttered by virtually all of their counterparts in Western liberal democracies (at least at this time in the history

⁴ Zhou Xin, Nectar Gan and Catherine Wong, "Xi Jinping: China to stick to Communist rule and its own path to cope with 'unimaginable' perils" *South China Morning Post* (18 December 2018) available <https://www.scmp.com/news/china/politics/article/2178471/xi-china-stick-communist-rule-and-its-own-path-cope-unimaginable>.

⁵ See, e.g., Peter Martin & Kevin Hamlin, "China will 'never seek hegemony,' Xi says in defiant reform speech," *The Sydney Morning Herald* (19 December 2019) available <https://www.smh.com.au/world/asia/china-will-never-seek-hegemony-xi-says-in-defiant-reform-speech-20181219-p50n2x.html>; "Marking 40 years of reform, Xi says China won't be dictated to," *Aljazeera* (18 December 2018) available <https://www.aljazeera.com/news/2018/12/181218022820736.html>; Chris Buckley and Steven Lee Meyers, "China's Leader Says Party Must Control 'All Tasks,' and Asian Markets Slump," *The New York Times* (18 December 2018) available <https://www.nytimes.com/2018/12/18/world/asia/xi-jinping-speech-china.html>.

⁶ Zhou Xin et al., "Xi Jinping: China to stick to Communist rule," *supra* note 4.

⁷ "Marking 40 years of reform, Xi says China won't be dictated to," *Aljazeera* (18 December 2018) available <https://www.aljazeera.com/news/2018/12/181218022820736.html>

of the West) are not meant to be a political consumable with a very short half-life. Especially in the case of the speeches of Xi Jinping, they mean not just to produce the usual kinds of internal and external signals (and thus the counting referenced above). These remarks, however, may be more usefully understood for their contribution to the development of the fundamental political theory of the Chinese political model,

It is with that in mind, and with the benefit of the passage of a year that has stripped away the dross of the political situation around which the speech was delivered, a re-reading of the remarks more clearly exposes the substance of the evolution of Chinese Marxist Leninist theory in the new era. More particularly, Flora Sapio and I believe that there is a large measure of insight to be gained from a closer study of these remarks. This was an important speech on self-reflection, and on the communication of that reflection which may resonate in different ways for Chinese and for foreign readers. For that reason alone, the speech is worth considerable study. It is in that larger context that Flora Sapio has undertaken the task of translating and annotating this important speech. Annotations will be found in the footnotes of the translation.

Context, however, is also important is another important sense. One might better appreciate the richness of Xi Jinping's Anniversary Remarks when those remarks are contrasted with those produced at the time of the beginning of the New Era of Reform and Opening Up. The great distance between the beginning and end of the Reform and Opening Up period is nicely evidenced by the differences in the 40th Anniversary speech of Xi Jinping, translated below, and the speech of Mr. Xi's father, Xi Zhongxun, which was delivered a little over thirty years earlier. What connects father and son also evidences the distance traveled between 1986 and 2018. Both speeches look forward, and both see in Marxist Leninism the dynamic vehicle for that forward march. Yet both look forward in substantially distinct historical contexts. And those differences tell us much about the capacity for change built into Chinese Marxist Leninism, and the way that dynamism is expressed in its application to both the CPC and the state.

There is both a wide gulf and a strong continuity that separates and unites the speeches of father and son. It is that gulf—and those continuities—that reflect the profound but

historically contingent evolution of Chinese Marxist-Leninism from the last third of the 20th to the first third of the 21st centuries. Xi *père* evidences the exuberance of a Chinese Marxist-Leninism that at last can free itself from the weight of its European origins, its Soviet manifestations, and the burdens of its own national history. It speaks to the possibility of reform and the advancement of Marxist-Leninism. The closing sentences of Xi Zhongxun's remarks are telling in this respect—and also foreshadow the discursive approach of his son.

“Ten thousand miles away on the path to Mount Dan, the song of the young phoenix on the Tong tree is clearer than the song of the old phoenix.” This was written by Tang poet Li Shangyin, and it says that when the Tong tree was in full bloom, the chant of the young phoenix was much clearer than the chant of the old phoenix. I hope you will unite as one, to create a performance in the construction of socialist modernization, that will be much more brilliant than the performance of the older generation!⁸

Xi *fils*, on the other hand, views that same exuberance from the other side of a what has become for him a deep historical divide. Xi *père* looks forward, reveling in the powerful potential at the start of a New Era of socialist modernization and the revitalization of a Chinese Marxist Leninism. Xi *fils* looks back on that period, producing an accounting of that time of socialist modernization which delivers up to those who now take up a new set of challenges for Chinese Marxist Leninism. Here, at the 40th Anniversary of the Reform and opening Up initiative one hears Xi *fils*, the young phoenix singing on the Tong Tree whose full bloom reflects the striving of the old phoenix whose voice is now fading into history.

The younger of the two Phoenixes may be clearer, but both sing similar tunes in important respects. That harmony

⁸ Xi Zhongxun, “Speech at the Forum Commemorating the Sixty-Seventh Anniversary of the “May Fourth” Movement (3 May 1986),” (Flora Sapio, trans.) *Emancipating the Mind: Bulletin of the Coalition for Peace & Ethics* 15(1):105-111; 110-111 (2020). In the original: “桐花万里丹山路，雏凤清于老凤声。”这是唐代诗人李商隐写的，说的是桐花盛开的时候，小凤凰唱出了比老凤凰更为清亮的歌声。我想借用这两句诗，寄希望于我国的年青一代。希望你们团结一致，在社会主义现代化建设中，创造出比我们老一辈更加辉煌的业绩！

ought not to be overlooked. Between old and new eras there is much harmony still in the focus on reform, the belief in the necessity of the transformation of the masses as measured against the ideal individual, the belief in morality, culture and discipline as the bedrock of the road toward the establishment of a Communist society, the jettisoning of class divisions and its historical anchors under the leadership of a vanguard, the manifestation of ideological correctness in the hard facts of economic progress (as measured against the capitalist world and its accomplishments) and the fundamental primacy of the collective above the individual. These are the tunes that unite the old and the young phoenix. Between the time of Xi *père* to that of Xi *fi*ls, the Young Phoenix has become the Peng Bird riding high and flying for nine thousand li.⁹

Translations of both follow. Flora Sapio and Larry Catá Backer then comment on the speeches and the ideological trajectories they evidence.

⁹ “Xi Jinping, Speech at the Meeting Celebrating the 40th Anniversary of Reform and Opening Up (18 December 2018) (Flora Sapio, translator and annotator),” *Emancipating the Mind: Bulletin of the Coalition for Peace & Ethics* 15(1):71-103, 102 (2020) (annotation id., at n. 28 on the reference to the mythical Peng bird).

C. Article 2

Xi Jinping Speech at the Meeting Celebrating the 40th Anniversary of Reform and Opening Up (18 December 2018)

Flora Sapio, translator and annotator

Speech at the Meeting Celebrating the
40th Anniversary of Reform and Opening Up¹

18 December 2018

Xi Jinping

Comrades, friends:

December 18, 1978 is an important day that will inevitably be recorded in books on the history of the Chinese Nation, on the history of the Communist Party of China, on the history of the People's Republic of China. On this day, our Party convened the Third Plenum of the Eleventh Congress, to realize a great turn that would have a far-reaching meaning in the history of [our] Party since the foundation of New China, starting the great journey of reform and opening up, and socialist modernization.

Today, we are solemnly gathered here to look back at the glorious history of 40 years of reform and opening up, summarize the great achievements and valuable experience of reform and opening up, mobilize the whole Party, and the people of all ethnicities to continue to push forward reform and opening up in the New Era, and unremittingly struggle to realize the “Two Centenaries” struggle objective, and to realize the Chinese Dream of the Great Rejuvenation of the Chinese Nation.

¹ Annotations may be found in the footnotes.

Comrades, friends!

The Third Plenary Session of the Eleventh Central Committee of the Communist Party of China was convened at a major historical juncture when the Party and the State faced [the problem of] what course to follow. At that time, the world economy developed rapidly, and science and technology progressed rapidly. The 10 years of internal disorder of the "Cultural Revolution" had led the country's economy on the verge of collapse. The People didn't have sufficient food, and clothes to stay warm; the construction of our country and all of its industrial sectors was awaiting to flourish. From within and without the Party, a strong demand was raised to correct the mistakes of the "Cultural Revolution", allowing the Party and the State to again rise from the crisis. Comrade Deng Xiaoping pointed out: *"If, again, we don't implement reforms now, the cause of our modernization and the cause of Socialism will be dead and buried"*.²

Under the leadership of Comrade Deng Xiaoping and the support of the older generation of revolutionaries, the Third Plenary Session of the Eleventh Central Committee of the Communist Party of China broke the heavy shackles of long-lasting "left" mistakes; criticized the wrong direction of the "Two Whatevers"; fully affirmed the scientific system of Mao Zedong Thought that must be completed and accurately mastered; gave a high appraisal the discussion on the problem of the criterion of truth; decisively ended "taking class struggle as the central task"; re-established the ideological line, the political line, and the organizational line of Marxism. The curtain on China's reform and opening up was then lifted.

² "Liberate ideology, seek truth from facts, unite and look forward" (*Jiefang sixiang, shishi qushi, tuanjie yizhi xianqian kan*) in *The Selected Works of Deng Xiaoping, Volume 2* (*Deng Xiaoping Wenxuan di'erjuan*), pp. 140- 153. Beijing: People's Press (*Renmin Chubanshe*), 1994. Quotation at page 150. Translation mine. This quote is from a speech Deng Xiaoping delivered on December 13, 1978, before a closed-doors meeting of the Work Committee of the Central Committee of the Communist Party of China. The Work Committee was the institution responsible for organizing the plenary sessions of the Central Committee. Shortly after this closed-doors meeting, Deng's speech would become the "topical report" (*zhuti baogao*) delivered by Deng before the Third Plenary Session of the Eleventh Central Committee of the Communist Party of China.

Our party's historic strategic decision to implement reform and opening up is based on a profound grasp of the future destiny of the Party and the State. It is based on a profound summary of the practice of socialist revolution and construction. It is based on a profound insight into the trend of the times. It is based on a profound comprehension of the expectations and the needs of the masses of the people. Comrade Deng Xiaoping pointed out: "Poverty is not Socialism",³ "We want to catch up with the times, this is the purpose reform must achieve".⁴

Historical development has its laws, but man is not completely passive therein. If we grasp the broader trend of historical development, seize the opportunity of historical change, strive for achievements, forge ahead with determination, the society of mankind will make better progress.

Reform and opening up is the great awakening of our Party. It is this great awakening that gave birth to the great creation of our Party from theory to practice. Reform and opening up is a great revolution in the history of the development of the Chinese People and the Chinese nation. It is this great revolution that has promoted a quantum leap of Socialism with Chinese characteristics!

Comrades, friends!

The establishment of the Communist Party of China, the foundation of the People's Republic of China, the promotion of reform and opening up, and of the cause of Socialism with Chinese characteristics are the three major historical events to have taken place in China since the May 4th Movement, and the three major milestones in the realization of the Great

³ "Construct Socialism with Chinese characteristics" (*Jianshe you Zhongguo tese de shehuizhuyi*) in *The Selected Works of Deng Xiaoping, Volume 3* (*Deng Xiaoping Wenxuan disan juan*), pp. 62-66. Beijing: People's Press (*Renmin Chubanshe*), 1994. Quotation at page 64.

⁴ "The pace of reform has to accelerate" (*Gaigede buzi yao jiakuai*) in *The Selected Works of Deng Xiaoping, Volume 3* (*Deng Xiaoping Wenxuan disan juan*), pp. 236-243. Beijing: People's Press (*Renmin Chubanshe*), 1994. Quotation at page 242.

Rejuvenation of the Chinese Nation to have taken place in modern times.

The Communist Party of China, with Comrade Mao Zedong as its main representative, combined the basic principles of Marxism-Leninism with the concrete practice of the Chinese revolution, established Mao Zedong Thought, united and guided the entire Party and the People of all nationalities, and after a long period of bloody struggle, completed the New Democratic Revolution, founded the People's Republic of China, instituted a basic socialist system, successfully realized the most profound and the greatest social change in the history of China, establishing the fundamental political premises and the institutional foundation for all development and progress in contemporary China. During the process of exploration, although severe twists and turns were experienced, the original theoretical achievements and great achievements made by the Party during the socialist revolution and construction provided valuable experience, theoretical preparation, and a material basis to create Socialism with Chinese characteristics in the new historical era.

After the Third Plenary Session of the Eleventh Central Committee of the Communist Party of China, the Chinese Communists, with Comrade Deng Xiaoping as the main representative, united and guided the entire Party and the People of all nationalities in profoundly summarizing the positive and negative experiences of China's socialist construction, in learning from the historical experience of world Socialism, establishing Deng Xiaoping Theory. [They] made the historic strategic decision to transfer the core work of the Party and the State to economic construction, realize reform and opening up, profoundly revealing the essence of Socialism, establishing the basic line of the primary stage of Socialism, and clearly proposing to take an autonomous path and build Socialism with Chinese characteristics. Science has answered a series of basic problems in the construction of Socialism with Chinese characteristics. It has formulated a three-steps development strategy until the middle of the 21st Century, basically realizing the developmental strategy of socialist modernization, and successfully creating Socialism with Chinese characteristics.

After the Fourth Plenary Session of the Thirteenth Central Committee of the Communist Party of China, the Chinese Communists, with Comrade Jiang Zemin as the main representative, united and guided the entire Party and the People of all nationalities in upholding the Party's basic theory, basic line, deepening knowledge of what Socialism is, of how to construct a socialist society and of what Party to construct, and of how to build the Party, accumulating new valuable experience in ruling the Party and the State, forming the important thought of "Three Represents". In the face of an extremely complicated domestic and foreign situation, one where World Socialism was put to difficult and severe tests, Socialism with Chinese characteristics was defended, the objectives of reform of the socialist economic system and its basic framework were established, the basic economic system and distribution system of the primary stage of Socialism were established. A new phase of comprehensive reform and opening up was created, promoting the new great project of Party building, successfully pushing Socialism with Chinese characteristics into the 21st Century.

After the Sixteenth National Congress of the Communist Party of China, the Chinese Communists, with Comrade Hu Jintao as the main representative, united and guided the entire Party and the People of all nationalities in upholding the guidance of Deng Xiaoping Theory and the important thought of the "Three Represents". According to the new developmental requirements, [they] profoundly understood and answered major issues such as what kind of development to realize, and how to develop under the new situation, forming the concept of scientific development, grasping a period of strategic opportunities, promoting practical innovation, theoretical innovation, systemic innovation in the process of comprehensively building a moderately well-off society, emphasizing upholding a People-oriented, comprehensive, coordinated and sustainable development, forming a general layout for Socialism with Chinese characteristics, focusing on safeguarding and improving the People's livelihood, promoting social fairness and justice, promoting the building of a harmonious world, and promoting the construction of the Party's governing capability and the construction of its advanced nature, successfully upholding and developing

Socialism with Chinese characteristics at a new historical starting point.

Since the Eighteenth National Congress of the Communist Party of China, the Party Central Committee has united and guided the entire Party and the People of all nationalities in comprehensively examining the new international and domestic situation. By summarizing practice and looking towards the future, it has profoundly answered the major issue of the time of what kind of Socialism with Chinese characteristics should be upheld and developed, and how to uphold and develop Socialism with Chinese characteristics, forming the Thought on Socialism with Chinese Characteristics in the New Era, upholding the overall deployment of the “Five Into One”, coordinating and promoting the strategic deployment of the “Four Comprehensives”, upholding in its work the general direction of ensuring progress while maintaining stability, proposing a series of new ideas, new ideologies, new strategies for the work of the Party and the State in all sectors, promoting historic changes in the cause of the Party and the State, achieving historic successes. Socialism with Chinese characteristics has entered a New Era. With great political courage and wisdom, we proposed that the overall goal of comprehensively deepening reform was to refine and develop the socialist system with Chinese characteristics, to promote the modernization of the national governance system and of the governance capability, and strive to strengthen the systemic, holistic, coordinated nature of reform. [We] focused on major systemic innovation, strived to improve the sense of acquisition, happiness, safety of the People’s masses, launched more than 1,600 reform plans, chewed a lot of hard bones, crossed rapids and shoals, [but] reform showed its aspect of full power, making several new breakthroughs, advancing deeply, at a fast and steady pace.

*Success only comes through hard work.*⁵ For 40 years, we have emancipated our minds, sought truth from facts, we have

⁵ “艰难困苦，玉汝于成” in the original. This is a paraphrase of a quote (富贵福泽，将厚吾之生也；贫贱忧戚，庸玉女于成也) from the work “Correcting Ignorance” (正蒙, *Zhengmeng*) of the Neo-Confucian scholar Zhang Zai (1020 – 1077). “Correcting Ignorance” was completed in 1076, during Zhang Zai’s voluntary retirement from the politics of the Northern Sung Dynasty. Zhang Zai’s

made a new world through bold attempts and brave changes. From the implementation of the household contracting system, the emergence of township and village enterprises as a new force to be reckoned with, the abolition of agricultural taxes, taxation on animal husbandry and taxation on typical agricultural products to the separation of the “three rights” on the contracting of agricultural land, to victory in the fight against poverty, implementation of the strategy of rural revitalization; from the establishment of the Shenzhen and other special economic zones, the opening up of coastal, border, and river cities and of core inland cities, to accession to the World Trade Organization, the joint construction of the “One Belt One Road”, the establishment of free trade zones, the planning of free trade ports with Chinese characteristics, the successful hosting of the first China International Import Exhibition; from the [policy] of “bringing in” to the “going out” [strategy]; from the [policy] of doing a good job with large, medium, and small State-owned enterprises, developing the private economy to deepening the reform of State-owned assets and State-owned enterprises, developing a mixed-ownership economy; from the system of public ownership to the system of public ownership as the main [form of ownership], and the common development of diverse forms of ownership, and the upholding of the “Two Unswerving”; from a traditional planned economic system to the unprecedented system of Socialist market economy, to the decisive role of the market in resource allocation, and a better expression of the role of government; from economic system reform as the main [policy] to the comprehensive deepening of the systems of economic, political, cultural, social, environmental civilization, and reform in the system of Party building, reform of Party and State institutions, reform of the administrative management system, reform of the system of governing the country in accordance with the law, reform of the judicial system, reform of the foreign affairs system, reform of the social governance system, reform of the environmental supervision system, reform of the State security system reform of national defense and of the army, reform in Party leadership and the system of Party building, reform in the system of discipline supervision – a series of major reforms have made solid progress, each one of them making [life more] convenient

most important contribution to Chinese philosophy were in metaphysics and in his theory of qi (*vital force*).

for the people, benefitting the people, being advantageous for the people. Their conduction and continuous implementation have made reform and opening up become the most remarkable feature and the most majestic atmosphere of contemporary China.

Comrades, friends!

In the past 40 years of reform and opening up, from the beginning of the new period (*xin shiqi*) to the ingress in a new century, from a new starting point to the ingress in the New Era; [these have been] 40 years of being together in the same boat through the wind and the rain; 40 years of cutting our way through the thistles and the thorns; 40 years of being tempered and advancing bravely. Our Party has led the People to surge forward with great momentum, to paint a broad-minded historical scroll, to compose a stirring and inspiring hymn of praise to struggle, that moves the heavens and shakes the earth.

—— For 40 years, we have constantly insisted on emancipating the mind, seeking truth from facts, advancing with the times, seeking truth and being pragmatic, unswervingly upholding the guiding position of Marxism, unswervingly upholding the basic principles of scientific Socialism, bravely promoting theoretical innovation, practical innovation, system innovation, cultural innovation and innovation in all aspects. We have consistently endowed Socialism with Chinese characteristics with distinct practical characteristics, theoretical characteristics, ethnic characteristics, and characteristics of the times, forming a socialist road, theory, system, and culture with Chinese characteristics, and demonstrating with irrefutable facts the vitality of scientific Socialism, the great banner of Socialism has always been flying high on the land of China!

—— For 40 years, we have constantly upheld economic construction as the center and continuously emancipated and developed social productive forces. China's GDP has grown from 367.9 billion yuan to 82.7 trillion yuan in 2017, with an average annual growth rate of 9.5%, much higher than the average annual growth rate of 2.9% of the world economy in the same period. China's GDP as a share of world GDP has risen from 1.8% at the beginning of reform and opening up to 15.2%, and our contribution to world economic growth has exceeded 30% over

the years. The total import and export volume of China's goods has increased from 20.6 billion US dollars to more than 4 trillion US dollars. The cumulative use of foreign direct investment has exceeded 2 trillion US dollars, and the total of foreign investment has reached 1.9 trillion US dollars. The output of China's major agricultural products has leapt to the forefront of the world, the world's most complete modern industrial system has been established, and technological innovations and major projects have been reported frequently. Achievements in the construction of China's infrastructure are remarkable, information channels are smooth, highways are networked, railway networks are dense, dams stand high, gas is transported from East to West, water is channeled from South to North, high-speed trains are rushing, large ships travel a great distance, airplanes are soaring in the sky, [we have] *turned deep chasms into thoroughfares*.⁶ At present, China is the world's second largest economy, the largest manufacturing country, the largest country in terms of trade in goods, the second largest country in commodity consumption, and the second largest country in terms of foreign capital inflows. China's foreign exchange reserves have ranked first in the world for many years. The Chinese People has made decisive steps in the journey to become rich and to become strong!

—— For 40 years, we have constantly upheld the path of socialist political development with Chinese characteristics, continuously deepened reform of the political system, progressively improved the leadership system of the Party and the State, comprehensively promoted ruling the country according to the law. The socialist legal system with Chinese characteristics has gradually become robust. The systemic guarantee and legal guarantee for the People to be master of its own country are stronger. The cause of human rights has comprehensively developed. The Patriotic United Front is more consolidated. The content of the democratic rights the People enjoy and exercise according to the law is more plentiful, their channels are more convenient, their forms are increasingly diverse. The Chinese People, who controls its own destiny, has

⁶ 天堑变通途 (*tianqian biantong tu*), or “a deep chasm has turned to a thoroughfare” in the original. This is a verse from the poem “Swimming”, composed by Mao Zedong in June 1956. See “Swimming”, *The Maoist Documentation Project*, <https://www.marxists.org/reference/archive/mao/selected-works/poems/poems23.htm>

showed unprecedented enthusiasm, initiative, and creativity, and has demonstrated its inspiring, powerful strength in the development reform and opening up, and in the construction of Socialist modernization!

—— For 40 years, we have constantly upheld the development of advanced socialist culture, strengthened the construction of a socialist spiritual civilization, cultivated and practiced the core Socialist values, inherited and continued the fine traditional Chinese culture, upheld scientific theory as our guide, concentrated and gathered strength by a correct public opinion, shaped our soul with advanced culture, inspired out morale with excellent works, broadly promoted the spirit of patriotism, collectivism, Socialism. Models of the time and model heroes have constantly emerged, the culture and the arts are prosperous, the internet sector is rapidly developing, the whole nations' faith in ideals and cultural self-confidence are stronger and stronger, the soft power of our national culture and the influence of Chinese culture have significantly increased. Reform and opening up has created a great spirit of reform and opening up, greatly enriching national inner spiritual qualities, and has become the most distinctive spiritual identity of contemporary Chinese People!

—— For 40 years, we have constantly upheld safeguarding and improving people's livelihood in development, comprehensively promoting children's education, that those wishing to study have someone to teach them, that those who labor earn an income, that the sick receive medical care, that the elderly are taken care of, that those looking for a place to live have an abode, that the weak be supported, continuously improving the People's welfare. The per capita disposable income of residents has increased from 171 yuan to 26,000 yuan, and the middle-income group has continued to expand. The poverty-stricken population of China has decreased by 740 million people, and the incidence of poverty has dropped by 94.4 percentage points. [We have] written a glorious chapter in the human history of efforts at reducing poverty. The education industry has comprehensively developed, and the consolidated rate of the nine-year compulsory education has reached 93.8%. China has built the world's largest social security system including pension, medical care, subsistence allowances and housing. The basic old-age pension insurance covers more than

900 million people and the medical insurance covers more than 1.3 billion people. The rate of urbanization of permanent residents has reached 58.52 percentage points, an increase of 40.6 percentage points. The life expectancy of residents increased from 67.8 years in 1981 to 76.7 years in 2017. China's overall social situation has remained stable for a long time and China has become one of the safest countries in the world. Rationing tickets for cereals, cloth, meat, fish, oil, tofu, non-staple foods, industry vouchers – which were an inseparable part of the lives of the ordinary people are now exhibited in history museums. Starvation and famine, lack of food and of clothes to wear, hard lives, the problems that have plagued our People for thousands of years are forever gone!

—— For 40 years, we have constantly upheld environmental protection and resource conservancy, upholding and promoting the construction of an ecological civilization, accelerating the formation of a system of ecological civilization, gradually improving the system of main functional areas, making significant progress in energy conservation and in reducing emissions. Major ecological protection and restoration projects are progressing smoothly. Ecological and environmental governance has been significantly strengthened. [We have] actively participated in and guided international cooperation on climate change. The home where the Chinese People is born and lives has become more pleasant!

—— For 40 years, we have constantly upheld the Party's absolute leadership over the army, continuously promoting the modernization of the national defense and the military, promoted the revolutionary reshaping of the People's Army, made historic breakthroughs in weapons and equipment, made fundamental changes in the methods of army governance. The level of revolutionary reshaping, modernization, regularization [of the military] have significantly improved. The ability of the People's Army to safeguard national sovereignty, security, and development interests has been significantly enhanced. [The army] has become an unbreakable, powerful force to defend the happy life of the People, defend the motherland and world peace!

—— For 40 years, we have constantly promoted the great cause of peaceful reunification of the motherland, implemented the basic principle of “one country, two systems”, successively

resumed the exercise of sovereignty over Hong Kong and Macao, and washed away the century of humiliation of the Chinese nation. We uphold the One-China Principle and the “1992 Consensus”, strengthen cross-strait economic and cultural exchanges and cooperation, promote the peaceful development of cross-strait relations, resolutely oppose and contain the separatist forces of “Taiwan independence”, and firmly grasp the leading power and power of initiative over the development of cross-strait relations. The sense of ethnic identity and cultural identity of the children of China at home and abroad has been greatly enhanced, and the will to build the Chinese Dream together is stronger!

—— For 40 years, we have constantly upheld a foreign policy of peace and self-determination, always taking the road of peaceful development, pursuing a development strategy of mutual benefit and win-win, firmly defending the basic norms of international relations, defending international fairness and justice. We have realized a historical transition from closure, to semi-closure, to full-scale openness, actively participated in the process of economic globalization, and made appropriate contributions to promoting the development of mankind. We have actively promoted the construction of an open world economy, built a community of human destiny, promoted the transformation of the global governance system, taken a clear-cut stance against hegemonism and power politics, and continuously contributed China’s wisdom, China’s plans, and China’s strength to world peace and development. China is increasingly approaching the center of the world stage and has become a builder of world peace, a contributor to global development, and a defender of the international order recognized by international society!

—— For 40 years, we have constantly upheld the strengthening and refinement of Party leadership, actively responding to all the kinds of risks and tests the Party faced during [its] long-term governing (*zhizheng*) and opening up and reform. We have continued to promote the new great project of Party building, maintaining the Party’s advanced nature and purity, maintaining a flesh-and-blood relation between the Party and the People’s masses. We have actively explored the laws of governing (*zhizheng*) by the Communist Party, the laws of Socialist construction, the laws of the social development of

mankind, constantly opening up new realms for the sinification of Marxism. We uphold the Party managing (*guan*) the Party, strictly managing the Party, purifying the political ecology within the Party. We uphold using permanent rectification (*zhengfeng*) and a strict discipline to vigorously bring under control the winds of formalism, bureaucratism, hedonism and extravagance, severely punish corruption with zero tolerance, and achieve an overwhelming victory in the fight against corruption. In times of revolutionary forging, our Party is firmly at the forefront, and it is always the backbone of the Chinese People and the Chinese nation!

In 40 years *the spring wind has turned to rain, and spring flowers have yielded their autumnal fruit.*⁷ Reform and opening up has greatly changed the face of China, the face of the Chinese nation, the face of the Chinese People, and the face of the Communist Party of China. The Chinese nation has made a major leap from standing up, to getting rich and getting stronger! Socialism with Chinese characteristics has made a major leap from creation, to development, to refinement! The Chinese People has made a major leap from having insufficient food and clothing to being moderately well-off and prosperous! The Chinese nation is standing up at the East of the world with a brand new, high and steep attitude!

The achievements of the past 40 years neither fell down from the sky, nor were they donated to us by others. They are instead the product of the hard work, wisdom and courage of the whole Party, the whole nation, and the People of all ethnicities! We have spent decades to complete the industrialization process, that took centuries for developed countries to go through. In the hands of the Chinese People, the impossible becomes possible. We are extremely proud about and boast the miracle the Chinese People has created among itself!

⁷ 春风化雨、春华秋实 in the original. This is a quotation inspired by the *Biography of Xing Yong, Kingdom of Wei, Records of the Three Kingdoms* (*Sanguozhi, Weishu, Xing Yongzhuan*). Together with the Historical Records (*Shiji*), the Book of Han (*Hanshu*), and the Book of the Later Han (*Houhanshu*), the *Records of the Three Kingdoms* is one of the official dynastic histories of China. Authored by Chen Shou (233-297), the book records the history of the kingdoms of Shu, Wu and Wei.

Here, as representative of the Central Committee of the Party, I express my highest respect to all the workers, peasants, intellectuals, cadres, officers and soldiers of the PLA, officers of the People's armed police, police officers, to the members of democratic parties and persons without a party affiliation, to all members of social organizations, and to all patriots who have contributed their wisdom and strength to reform and opening up and the construction of Socialism on all fronts! I send a sincere greeting to the compatriots of the Hong Kong Special Administrative Zone, to the compatriots of the Macao Special Administrative Zone, to the compatriots of Taiwan and to the overseas Chinese who have actively contributed to the reform and opening up and to the modernization of the motherland! I express my heartfelt thanks to all the foreign friends and the peoples of all countries who care about and support China's reform and opening up and modernization!

Comrades, friends!

40 years of practice have fully proved that since the Third Plenary Session of the Eleventh Central Committee of the Party, our Party has been completely correct in uniting and leading the People of all ethnicities of China to open up the road, theory, system, and culture of Socialism with Chinese characteristics; it has been completely correct in forming a basic theory, a basic line, a basic direction for the Party. The formation of a basic theory, a basic line, basic direction for the Party is completely correct.

40 years of practice have fully proved that China's development has provided a successful modernization experience for developing countries; has demonstrated a bright future; has been a powerful force for promoting world peace and development, and a major contribution of the Chinese nation to the progress of human civilization.

40 years of practice have fully proved that reform and opening up is an important teaching (*fabao*) of the Party and the People to catch up with the times; it is the necessary road to uphold and develop Socialism with Chinese characteristics; it is the key to determine the destiny of contemporary China; it is also the key to determine the realization of the "Two

Centenaries” struggle objective, a move crucial to achieve the Great Rejuvenation of the Chinese Nation.

Only by adjusting to the tide of history, actively adapting, and actively seeking change, can we walk with the times. *"Practice enriches knowledge. More knowledge leads to better practice"*.⁸ The valuable experience accumulated in the 40 years of reform and opening up is a precious spiritual wealth of the Party and the People. Upholding and developing Socialism with Chinese Characteristics has an extremely important guiding significance for the New Era, [a significance] that must be increasingly cherished, upheld for a long time, and continuously enriched and developed through practice.

First, we must uphold Party's leadership over all work and constantly strengthen and refine Party leadership. The practice of 40 years of reform and opening up has revealed to us: the leadership of the Communist Party of China is the most essential feature of Socialism with Chinese characteristics. It is the greatest advantage of the socialist system with Chinese characteristics. Party, government, army, people, and science, East, West, South, North and Center, the Party leads everything. It is precisely because we have always upheld the Party's centralized and unified leadership that we could realize a great turning point in history, start a new period (*xin shiqi*) of reform and opening up, and the new journey of Great Rejuvenation of the Chinese Nation; that we could successfully respond to series of major risks and challenges, and overcome countless difficulties and obstacles; that we could effectively respond to changes in the overall situation, appease the waves, fight against floods, prevent SARS, resist to earthquakes, and diffuse crises; that we took neither an old, closed, ossified road nor the evil road of those who change their flag, but firmly upheld the road of Socialism with Chinese characteristics. To uphold Party leadership, we must constantly improve Party leadership, make Party leadership more adaptable to the requirements of practice, to the requirements of the times, and to the requirements of the People. Concerning the major principle of upholding Party

⁸ 行之力则知愈进，知之深则行愈达 in the original. This quotation is from the preface to the “Explanation of the Analects of Confucius” (*Lunyu yijie*), a philosophical text authored during the Southern Song Dynasty (1127 – 1279) by the Neo-Confucian scholar Zhang Shi.

leadership – something decisive for the future destiny of the Party and the state – the entire Party must maintain a high degree of ideological consciousness, political consciousness, consciousness of action, that cannot be shaken.

On the way forward, we must strengthen the “Four Kinds of Consciousness”, adhere to the “Four Matters of Confidence”, resolutely safeguard the authority of the Party Centre and its centralized and unified leadership, implement and reflect Party leadership in the stability of reform and development; in internal affairs, foreign policy, national defense; in the governance of the Party, the governance of the State, the governance of the army and in any other field. None of the steps of reform and opening up is light or easy. In the future, we will face diverse risks and challenges, and even encounter unimaginably dangerous storms. Our Party must be in full control of the overall situation, coordinate all actors, uphold scientific governance, democratic governance and governing (*zhizheng*) according to the law, refine the methods of Party leadership and the methods of governing (*zhizheng*), improve the Party’s governing capability and its level of leadership, continuously improve the Party’s capability and decisiveness in grasping the direction, planning the overall situation, determine policy, and promote reform, ensuring that the ship of reform and opening up sails along the correct route.

Second, we must uphold People as the center (*renmin wei zhongxin*), and constantly realize the People’s yearning for a better life. The practice of 40 years of reform and opening up has revealed to us: the Original Intent (*chuxin*) and the mission of Chinese communists, and the Original Intent and mission of reform and opening up are seeking happiness for the Chinese People and seeking the rejuvenation of the Chinese nation. The fundamental goal of our Party is that the Party comes from the People, has its roots in the People, benefits the People, and wholeheartedly serves the People (*quanxin quanyi wei renmin fuwu*). We must take the basic interest of the overwhelming majority of the People as the fundamental starting point and the foothold of all our work, and uphold as the basis of defining policies whether [policy] supports the People, whether it is endorsed by the People, whether the People is happy about it, whether it is in tune with the heart of the people, respects the people’s will, pays attention to the sentiment of the people,

constitutes an effort for the people's livelihood, and lead the People forward by proposing and implementing correct theories, directions, lines and policies, and also gain momentum from the People's practical creation and requirements about development, making the People share the fruits of reform and opening up, and inspire the People to participate in the cause of reform, opening up and Socialist modernization with a greater awareness.

On the way forward, we must always regard the People's longing for a better life as the goal of our struggle, practice the fundamental goal of the Party, implement the Party's mass line, respect the position of the People as the master, respect the will expressed by the People's masses through their practical activities, the experiences they create, the rights they hold, the role it plays, and fully stimulate the creative power that lies in the People's masses. We must complete the overall democratic system, broaden the channels of democracy, enrich the forms of democracy, refine the guarantees of the rule of law, and guarantee that the People enjoy democratic rights that are widely, fully, truly, concretely and effectively exercised in accordance with the law. We must focus on solving the urgent needs of the People's masses and let the People share the economic, political, cultural, social, ecological and all the other fruits of development; have more, more direct and more realistic feelings of acquisition, feelings of happiness, feelings of security, and continuously promote the comprehensive development of man and the common prosperity of all the People.

Third, we must uphold the guiding position of Marxism and constantly advance theoretical innovation based on practice. The practice of 40 years of reform and opening up has revealed to us: innovation is the life of reform and opening up. The practice of development has no boundaries, and the emancipation of the mind has no limits. Engels said: "*the final causes of all social changes and political revolutions are to be sought, not in men's brains, not in men's better insights into eternal truth and justice, but in changes in the modes of production and exchange.*"⁹ We uphold the connection between

⁹ Friedrich Engels, *Socialism: Utopian and Scientific*. Edward Aveling transl. New York: Cosimo Classics, 2008. The quotation is from the first paragraph in Chapter 3, Historical Materialism.

theory and practice, providing timely answers to the questions of the times and to the questions of the People; clearing up the dense ideological fogs (*sixiang miwu*) that plague and constrain the development of practice; continuously pushing forward the sinification, the updating, and the popularization of Marxism; and constantly opening up new realms for the development of Marxism.

On the way forward, we must uphold the guidance of Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory, the Important Thought of the “Three Represents”, the Scientific Development Concept, and the Thought of Socialism with Chinese characteristics in the New Era, and uphold the organic unity of emancipating the mind and seeking truth from facts. Developing Marxism in the 21st Century and Marxism in contemporary China is the historical responsibility that binds the Communists of contemporary China. We must strengthen [our] awareness of problems, [our] awareness of the time, [our] sense of strategy, grasp the essence and the internal connections of development from a profound historical perspective, and from a broad international perspective; closely follow the creative practice of the hundreds of millions of the People; draw from and assimilate all the outstanding achievements of mankind; and continuously respond to the new and major issues the times and practice pose to us, allowing contemporary Chinese Marxism to even more brilliantly radiate the rays of truth (*zhenli*).

Fourth, we must uphold the path of Socialism with Chinese characteristics and constantly uphold and develop Socialism with Chinese characteristics. The practice of 40 years of reform and opening up has revealed to us: future is determined by the direction (*fangxian*), and destiny is determined by the road. If we want to hold our destiny in our own hands, we must have the determination to not change our will and not change our path. In 40 years of reform and opening up, the theme all the theory and practice of our Party has been upholding and developing Socialism with Chinese characteristics. In China, a large country with a history of more than 5,000 years of civilization and a population of over 1.3 billion people, to push forward reform and development there is no textbook that can be regarded as a golden rule, and neither are there teachers who can arrogantly and bossily give orders

to the Chinese people by pointing their chin at them. Mr. Lu Xun said: “*What is a road? It is a place that has been trampled out from the place where there was no road, and it has been opened up from a place with only thorns.*”¹⁰ The road of Socialism with Chinese characteristics is a road of brilliant future prospects for contemporary China to catch up with the times in big strides, leading the development of the times, a road to walk unwaveringly.

On the way forward, we must uphold the guidance of Socialism with Chinese Characteristics in the New Era and the spirit of the 19th National Congress of the Communist Party of China, strengthen the “Four Matters of Confidence”, and firmly grasp the direction of reform and opening up. What to change and how to change must be based on the fundamental yardstick of whether it conform to the overall goals of refining and developing the Socialist system with Chinese characteristics, and pushing forward the modernization of the State governance apparatus, and of the governing capability. What must be changed, what can be changed – we should resolutely change it. What must not be changed, what cannot be changed – we must resolutely not change it. We must uphold the Party's basic line, unite economic construction as the center with the two basic points of upholding the four basic principles, and upholding reform and opening up to the great practice of Socialism with Chinese characteristics in the New Era, uphold it for a long time, and unshakingly.

Fifth, we must uphold refining and developing the Socialist system with Chinese characteristics, and continuously exert and strengthen the systemic advantages of our country. The practice of 40 years of reform and opening up has revealed to us: systems are fundamental, overall, stable and long-term elements that relate to the development of the cause of the Party and the State. We have tweaked the key to refining and developing the Socialist system with Chinese characteristics, providing robust guarantees for the emancipation and development of social productive forces; for the emancipation of strengthening of the life-force of society; and for the perpetual vitality of the Party and the State. In order to maintain the stability of the overall situation of society, to ensure that the

¹⁰ Lu Xun, “Casual Annotation No. 66” (*Suiganlu* 66), in *Hot Wind* (*Refeng*), Beijing: Renmin Wenxue Chubanshe, 1973.

People lives in peace and works happily, provide strong guarantees to national security, [we must] release all the energies of labor, knowledge, technology, management, capital, and make competition among them burst forth, [we must] make all sources producing of social wealth fully flow and constantly establish dynamic institutional mechanisms.

On the way forward, we must unwaveringly consolidate and develop the public sector of the economy; unwaveringly encourage, support, and guide the development of the non-public sector of the economy; give full play to the decisive role of the market in allocating resources; give better play to the role of the government, and stimulate the vitality of all kinds of market players. We must uphold the organic unity among Party leadership, the People as the master of its country, and governing the country according to the law; [we must] uphold and refine the People's Congress system; the multi-party cooperation and political consultation system under the leadership of the Communist Party of China; the system of autonomy of ethnic areas; the system of grassroots autonomy of the masses; comprehensively promote governing the country according to the law; consolidate and develop the most extensive patriotic United Front; develop Socialist consultative democracy, and use systems to ensure that the People is the master of the country. We must strengthen the construction of systems in the cultural field, raise the banner, gather the hearts of the people, educate new men, promote culture, display vivid images, actively cultivate and practice Socialist core values, promote the innovative transformation and innovative development of the excellent Chinese traditional culture, inherit revolutionary culture, develop advanced culture, strive to create a Chinese culture that shines in the Times and shines in the world. We must strengthen the construction of social governance systems, continuously promote social fairness and justice, and maintain social stability and order. We must strengthen the construction of ecological civilization systems and implement the most stringent environmental protection system. We must resolutely remove all institutions and mechanisms that obstacle development, and consolidated barriers posed by [interests], accelerating the formation of institutional systems that are complete, scientifically regulated, effective in their operation, and promote a more mature and a more finalized Socialist system with Chinese characteristics.

Sixth, we must uphold development as the top priority and continuously enhance China's overall national strength. The practice of 40 years of reform and opening up has revealed to us: emancipating and developing social productive forces and enhancing the comprehensive national strength of Socialist countries are the essential requirements and fundamental tasks of Socialism. Only by firmly placing economic construction at the center, unwaveringly upholding development has the last word (*ying daoli*), that development should be the strategic thinking of scientific development and high-quality development, and promoting sustained and healthy economic and social development, China's economic strength, scientific and technological strength, and national defense. comprehensive national strength, can comprehensively be enhanced; and we can lay a solid material foundation to uphold and develop Socialism with Chinese characteristics and realize the Great Rejuvenation of the Chinese Nation.

On the way forward, we must focus on solving the major social contradictions between the People's growing demands for a better life and an unbalanced and inadequate development; resolutely implement the concept of innovative, coordinated, green, open, and shared development, and promote the overall deployment of the "Five Into One", coordinate and promoted the strategic deployment of the "Four Comprehensives", promote high-quality development, promote the simultaneous development of new industrialization, informatization, urbanization, and agricultural modernization, accelerate the construction of a modern economic system, and strive to achieve a higher quality and an efficient, fairer and more sustainable development. We must uphold structural reform of the supply-side as the main line, actively transform the mode of development, optimize the economic structure, transform the driving force of growth, actively expand domestic demand, implement the Coordinated Regional Development Strategy, implement the Rural Revitalization Strategy, resolutely lay the groundwork to prevent and diffuse major risks, accurately eliminate poverty, wage the battle of pollution prevention and control. We must uphold the concept that innovation is the first driving force, talent is the first resource, implementing a development strategy driven by innovation, refining national innovation systems, accelerating the independent innovation of

key core technologies, creating new engines of economic and social development. We must strengthen the construction of an ecological civilization, firmly establish that lucid waters and lush mountains are invaluable assets, form a green mode of development and lifestyle, build our great motherland to be more beautiful, let the People live in a magnificent environment with a blue sky, green mountains and clear water.

Seventh, we must uphold broadening opening up, and constantly promote the construction of a community of shared destiny. The practice of 40 years of reform and opening up has revealed to us: opening up brings progress, and closure makes one lag behind. The development of China cannot be separated from [the development of] the world, and the prosperity of the world also needs China. We will coordinate the domestic and international overall situations, uphold the basic national policy of opening up to the outside world, implement a proactive policy of opening-up, forming a comprehensive new pattern of opening-up that is all-round, multi-level and trans-territorial, creating a good international environment for our country and opening up a broad space for development.

On the way forward, we must hold high the banner of peace, development, cooperation and win-win, abide by the foreign policy objectives of safeguarding world peace and promoting common development, and promote the building of new international relations [based on] mutual respect, fairness, justice, and win-win cooperation. We must respect the right of the People in all countries to choose their own development path; safeguard international fairness and justice; advocate the democratization of international relations, oppose imposing one's will on others; oppose interference in the internal affairs of other countries; and oppose strong [countries] bullying [weak ones]. We must play the role of a responsible big country, support the development of the vast number of developing countries, actively participate in the reform and construction of the global governance system, and struggle together to build a world of lasting peace, universal security, common prosperity, openness, tolerance, and clean beauty. We must support an open, transparent, inclusive and non-discriminatory multilateral trading system, promote the liberalization and the facilitation of trade and investment, and promote an economic globalization [oriented] towards a more open, inclusive, general,

balanced and win-win direction. We must focus on building the “One Belt and One Road” and work together with all parties to build a new platform for international cooperation and add new impetus to the common development of the world. China will never develop itself at the expense of the interests of other countries and will never give up its legitimate rights and interests. China pursues a defensive national defense policy, and China's development does not pose a threat to any country. Regardless of how far China develops, it will never seek hegemony.

Eighth, we must uphold strictly ruling the Party and continuously improve the Party's creativity, cohesiveness, and combat effectiveness. The practice of 40 years of reform and opening up has revealed to us: to forge iron, one must make oneself hard. The key to running China's affairs is the Party, the key is upholding the Party's ability to manage the Party and to comprehensively strictly govern the Party. Only by leading the great social revolution of reform, opening up, and Socialist modernization, our Party will unwaveringly push forward the great self-revolution of the Party, daring to remove all the viruses eroding the healthy body of the Party, enabling the Party to continuously purify itself, refine itself, innovate itself, improve itself, and constantly enhance the Party's capacity of political leadership, its capacity of ideological guidance, its capacity to organize masses, its social appeal, ensuring that the Party always maintains flesh-and-blood ties with the people.

On the way forward, we must follow the general requirements of Party building in the New Era, placing political construction in command, continuously push forward the new great project of Party building, continuously strengthening the unity and solidarity of the entire Party, create vitality, and constantly strengthen the ruling ability of the whole Party, making party building stronger and more powerful. We must uphold examining ourselves in light of the requirements of the development of the times, alerting ourselves through a strong sense of urgency, strengthening and refining ourselves through the spirit of reform and innovation, exercise improvement in coping with risk and challenges, purifying and cleansing ourselves through solving the outstanding contradictions and problems in the Party, and continuously improve the level of managing the Party and governing the Party. We must uphold

having both ability and political integrity (*decai jianbei*),¹¹ placing morality first (*yide weixian*),¹² appointing people on the basis of their ability and integrity (*renren weixian*),¹³ and strive to cultivate a high-quality team of cadres and a large team of talents who are loyal, clean, and enterprising. We must forever be tenacious and cling to anti-corruption on our road, more deeply curing its root causes and symptoms, resolutely eliminating all corrupt elements, guaranteeing that cadres are clean, that the government is clean, that politics is clean, and

11 A concept originally expressed in “The Role of the Chinese Communist Party in the National War”, as follows:

“The Chinese Communist Party is a party leading a great revolutionary struggle in a nation several hundred million strong, and it cannot fulfil its historic task without a large number of leading cadres who combine ability with political integrity.”

See Mao Zedong, “The Role of the Chinese Communist Party in the National War”, October 1938, *The Selected Works of Mao Zedong, Vol. 2*, Peking, People’s Publishing House, 1960, at p. 195 and ff.

12 Combining ability and political integrity and placing morality first are concepts that were already expressed in the Resolution of the Central Committee on Some Major Problems in Strengthening and Improving Party Building Under New Circumstances (*Zhonggong Zhongyang guanyu jiaqiang he gaijin xin xingshixia dangde jianshe zhongda wentide jueding*) (19 September 2009).

13 This concept, too, can be found in the writings of Mao Zedong: “Throughout our national history there have been two sharply contrasting lines on the subject of the use of cadres, one being to “appoint people on their merit”, and the other to “appoint people by favouritism”. The former is the honest and the latter the dishonest way. The criterion the Communist Party should apply in its cadres policy is whether or not a cadre is resolute in carrying out the Party line, keeps to Party discipline, has close ties with the masses, has the ability to find his bearings independently, and is active, hard-working and unselfish. This is what “appointing people on their merit” means. The cadres policy of Chang Kuo-tao was the exact opposite. Following the line of “appointing people by favouritism,” he gathered personal favourites round himself to form a small clique, and in the end he turned traitor to the Party and decamped. This is an important lesson for us. Taking warning from it and from similar historical lessons, the Central Committee and the leaders at all levels must make it their major responsibility to adhere to the honest and fair way in cadres policy and reject the dishonest and unfair way, and so consolidate the unity of the Party”. Mao Zedong, “The Role of the Chinese Communist Party in the National War”, October 1938, *The Selected Works of Mao Zedong, Vol. 2*, Peking, People’s Publishing House, 1960, at p. 195 and ff.

create a political ecology where *the sea is quiet and the rivers are clear*,¹⁴ to continue pushing forward reform and opening up.

Ninth, we must uphold the world outlook and methodology of dialectical materialism and historical materialism, and correctly handle the relationship between reform, development, and stability. The practice of 40 years of reform and opening up has revealed to us: China is a big country and we must never make subversive mistakes on fundamental issues. We uphold the combination of the strengthening Party leadership and respecting the spirit of initiative of the People; uphold the combination of “*crossing the river by feeling for the stones*”¹⁵ and top-level design; uphold the unity of problem orientation and goal orientation; uphold the mutual reinforcement between pilot trial and comprehensive promotion [of reforms], encourage bold trials, fearless breakthroughs, but also uphold seeking truth from facts, sowing good seeds and reaping good fruits, to ensure the stable and long-term nature of reform and opening up.

On the way forward, we must strengthen [our] strategic thinking, dialectical thinking, innovative thinking, rule of law thinking, bottom line thinking, strengthen macro-level

14 海晏河清 in the original. This is a traditional idiomatic expression (*chengyu*) that can be translated also as “the world is at peace”. On the verses “the sea is quiet and the rivers are clear” see Xiang Xianbiao, “The Right Time for the World Being at Peace”, (*Haiyan heqing zhengdangshi*), *China Army Network (Zhongguo Junwang)*, 21 November 2017, http://www.81.cn/jfjbmap/content/2017-11/21/content_192370.htm

15 This is an explicit reference to Deng Xiaoping’s approach to reform. The slogan “crossing the river by feeling for the stones”, however, was coined by Chen Yun:

“We must reform, but we must move gradually. Because the issues in our reform are complex, we cannot ask for haste. Reform must of course depend on certain theoretical research, economic statistics, and economic forecasting, but more importantly we must start from pilot sites and summarize our experience at various times, that is “crossing the river by feeling for the stones”. The first steps must be small, and we will move slowly”.

See Chen Yun, “The State of the Economy and the Lessons of Experience” (16 December 1980) (*Jingji xingshi yu jingyan jiaoxun*), in Chen Yun, *The Selected Works of Chen Yun, Volume 3 (Chen Yun Wenxuan disanjuan)* Beijing, Renmin Chubanshe, 1986, pp. 276-282.

considerations and top-level design, uphold being problem-oriented, focus on the prominent contradictions and problems facing China's development, conduct in-depth investigation and research, and encourage bold explorations at the grassroots. We must uphold the combining of reform decision-making and legislative decision-making, and continuously improve the scientific nature of reform decisions. We must display a tenacity that leaves scars on any piece of iron we grasp, and our footsteps on any stone we walk on, grasping implementation with the spirit of hammering in one nail after another, ensuring that all major reform measures are actually implemented. We must dare to be the first in the world, dare to try, but also be active and steady, stable and persistent, stabilize and unify reform and opening up, uphold our direction without changing, not deviate from our path, not reduce our strength, and push reform and opening up in the New Era to proceed with greater stability and to proceed to a greater distance.

Comrades, friends!

Upholding the unity of a wealthy country and a strong army, constructing a stable defense system and a strong army adequate to the international place of our country, and to the interest of national security and development are the strategic tasks of China's Socialist modernization. We must comprehensively implement the Party's ideology of a strong army in the New Era, uphold the Party absolute leadership over the military, grasp the general developmental trend of the world's new military revolution, uphold the road of strengthening an army with Chinese characteristics, comprehensively deepen the reform of national defense and of the military, promote constructing the army through politics, reforming the army to make it strong, developing the army through science and technology, govern the army according to the law, construct a People's Army that listens to the directives of the Party, that can win battles, with a good work style, diligently construct a world first-class army, that provides a strong backing to safeguarding national sovereignty, security, the interest of development, safeguarding world peace and stability, and realizing the Great Rejuvenation of the Chinese Nation.

The great concept of “One Country, Two Systems” has a strong vitality. We must comprehensively and accurately implement “One Country, Two Systems”, “Hong Kong People Govern Hong Kong”, “Macao People Govern Macao” and the line of a high degree of autonomy, strictly manage affairs according to the Constitution and the Basic Law, improve the systems and mechanisms related to the implementation of the Basic Law, and maintain the long-term prosperity and stability of Hong Kong and Macao. We will support and promote the better integration of Hong Kong and Macao into the overall situation of national development, and let the compatriots of Hong Kong and Macao share the historical responsibility of national rejuvenation with the People of the motherland, and share the great glory of the prosperity and strength of the motherland.

Realizing the complete reunification of the motherland is the common aspiration of all the children of China, and a fundamental interest of the Chinese nation. We must uphold the One China Principle and the “1992 Consensus”, consolidate and develop the foundation for the peaceful development of cross-strait relations, deepen cross-strait economic and cultural exchanges and cooperation, and benefit the compatriots on both sides of the strait. We have a firm political determination and a strong ability to safeguard national sovereignty and territorial integrity. Not even an inch of the sacred territory of the motherland can be separated!

Comrades, friends!

The Chinese People has the spirit of a great dream, and the Chinese nation is filled by the spirit of change and openness. Thousands of years ago, the ancestors of the Chinese nation held fast to the spirit of “*Even an established nation like Zhou still regards self-renewal as its mission*”,¹⁶ starting the creation of a

¹⁶ 周虽旧邦，其命维新 in the original. This has also been translated as “although Zhou was an old country, it received a new destiny”. See for instance:

“Establish Xiang, Xu, Xue, and Xiao, all those educational institutions, for the instruction of the people. The name Xiang indicates nourishing as its object; Xiao, indicates teaching; and Xu indicates archery. By the Xia dynasty the name Xiao was used; by the Yin, that of Xu; and by the Zhou, that of Xiang. As to the Xue, they belonged to the three dynasties, and by that name. The object of them

great practice of the Chinese civilization. Since the ancient times, on the land of China there have been countless reforms, transformations and movements seeking for strength, leaving the heroic declaration that “*there is more than one way of governance and the ancient way is not the only way to develop a nation*”.¹⁷ Since the ancient times, the Chinese nation has had relations and cultural exchanges with foreign nationalities with self-confidence and generosity. cherishing “*all people under heaven are one family*”¹⁸ and “*all nations should live in harmony*”,¹⁹ composing the long Song of the Silk Road that

all is to illustrate the human relations. When those are thus illustrated by superiors, kindly feeling will prevail among the inferior people below. Should a real sovereign arise, he will certainly come and take an example from you; and thus you will be the teacher of the true sovereign. It is said in the Book of Poetry, “Although Zhou was an old country, It received a new destiny.” That is said with reference to king Wen. Do you practise those things with vigour, and you also will by them make new your kingdom.”

James Legge, *The Chinese Classics: With a Translation, Critical and Exegetical Notes, Prolegomena, and Copious Indexes*, SMC Publication, 1991, p. 243.

- ¹⁷ 治世不一道，便国不法古 in the original. This has also been translated as “There is more than one way to govern the world, and there is no necessity to imitate antiquity, in order to take appropriate measures for the state”. See J. J.-L. Duyvendak, *The Book of Lord Shang*, Éditions Arthur Probsthain, London, 1928, p. 15.
- ¹⁸ 天下大同 in the original. This expression can be found in a variety of post-Han texts, and can also be translated as “harmony for all that which exists under heaven”, meaning in the world.
- ¹⁹ 协和万邦 in the original. An expression common in Pre-Qin texts, this has also been translated as uniting and harmonizing several states. See, for instance:

Examining into antiquity, (we find that) the Di Yao was styled Fang-xun. He was reverential, intelligent, accomplished, and thoughtful - naturally and without effort. He was sincerely courteous, and capable of (all) complaisance. The bright (influence of these qualities) was felt through the four quarters (of the land), and reached to (heaven) above and (earth) beneath. He made the able and virtuous distinguished, and thence proceeded to the love of (all in) the nine classes of his kindred, who (thus) became harmonious. He (also) regulated and polished the people (of his domain), who all became brightly intelligent. (Finally), he united and harmonized the myriad states; and so the black-haired people were transformed. The result was (universal) concord.

stretches through ten thousands li, creating the prosperity of the Tang Dynasty in Chang'an, [a city] where *ambassadors sent by the ten thousand countries flocked to be received*.²⁰ It is precisely this spirit of change and opening up of “*heaven maintains vigor through movement, a gentleman should constantly strive for self-perfection*”,²¹ and “*a gentleman should generously cultivate to become tolerant just like the Earth bears everything on it!*”²² that has allowed Chinese civilization to

James Legge, *The Chinese Classics Volume III, The Shoo King or The Book of Historical Documents*, London, Trübner & Co., 1865, p. 15.

- ²⁰ 万国衣冠 in the original. This is part of a verse from Wang Wei's poem “Morning Audience at the Daming Palace With Imperial Scribe Jia”, composed during the Tang Dynasty:

With crimson headdresses, palace time keepers deliver counters at
 daybreak
 Everyone wearing the imperial audience clothes, emerald-green bird feather
 coats
 Door after door, ascending to the last one, big door to a large room
 From all over the empire to pay respect to the emperor's crown

 Sun arrives, shadows from the candleholders moving
 Fragrant incense, all desire to be close to his ceremonial robe, a dragon that
 appears to emerge as he walks
 Court dismissed, we now have to make the rainbow-colored imperial
 documents
 The sounds from our jade, while walking back to the work table in our office.

See “Wang Wei: Morning Audience in the Daming Palace With Imperial Scribe Jia”, available at <http://www.learnancientchinese poetry.org/2016/11/01/wang-wei-morning-audience-in-the-daming-palace/>

- ²¹ 天行健，君子以自强不息 in the original. This is a reference to hexagram Qian in the Book of Changes:

In the third line, undivided, (we see its subject as) the superior man active
 and vigilant all the day, and in the evening still careful and apprehensive.
 (The position is) dangerous, but there will be no mistake.

James Legge, *The Sacred Books of China, The I Ching, Second Edition Facsimile*. New York: Dover Publications, 1899, p. 57.

- ²² 地势坤，君子以厚德载物 in the original. Another reference to the Book of Changes, this time to “comment to the images” of hexagram Kun:

The (capacity and sustaining) power of the earth is what is denoted by Kun.
 The superior man, in accordance with this, with his large virtue supports
 (men and) things

become be only magnificent civilization in human history to continue uninterrupted for over 5,000 years. From the perspective of several thousand years of history, change and opening up are generally the historical norm in China. The Chinese nation continues to move towards the future with an attitude of reform and opening up, with its deep-reaching historical roots, and its profound cultural roots.

Given we are such a big country, we should have great ambitions and magnificent aspirations. Comrade Mao Zedong said *“To win countrywide victory is only the first step in a long march of ten thousand li. Even if this step is worthy of pride, it is comparatively tiny; what will be more worthy of pride is yet to come. After several decades, the victory of the Chinese people’s democratic revolution, viewed in retrospect, will seem like only a brief prologue to a long drama. A drama begins with a prologue, but the prologue is not the climax.”*²³ *“We are not only good at destroying the Old World, we are also good at building the new.”*²⁴

At the beginning of reform and opening up, although our country is large and with a numerous population, we had a weak foundation, we faced repeated difficulties and challenges. However, we were full of confidence in the future, and we designed a grand blueprint for achieving Socialist modernization in more than 70 years, and in three stages. Without an extraordinary courage and firm self-confidence we would not have made such far-reaching plans and decisions.

For 40 years, our *toothlike roots have been planted deep among rocks*,²⁵ and the wind and the rain could not stop our

James Legge, *Supra*, p. 268.

²³ Mao Zedong, “Report to the Second Plenary Session of the Seventh Central Committee of the Communist Party of China”, 5 March 1949, in *Selected Works of Mao Tse-Tung, Volume 4*, Peking: Foreign Languages Press, 1961, p. 374

²⁴ *Supra*.

²⁵ 咬定青山不放松 in the original. This is a verse from Zheng Xie’s (1693-1765) poem Bamboo and the Rocks.

advance towards this great goal. The 19th National Congress of the Communist Party of China has put forward an even higher objective of struggle, forming a strategic arrangement from comprehensively building a moderately well-off society to basically realizing modernization, to comprehensively building a strong country of Socialist modernization. It has issued the strongest ever call to realize the Chinese Dream of the Great Rejuvenation of the Chinese Nation.

The ancients said: “*Careful planning and concrete actions lead to success, while complacency results in failure*”.²⁶ The Great Dream will not come if we wait for it, it will not come if we call for it, it is to be spelled out, it is to be done. We are now in a place and at a time where the ship sails more turbulently and the road to climb the mountain is steeper, a place where advancing is getting more difficult, advancing is getting more dangerous, and there is no turning back but only going forward. Reform and opening up has crossed thousands of mountains and rivers, but there are still mountains and rivers it needs to wade through. The mission placed before the entire Party and the People of all nationalities is even more glorious, the task is more arduous, the challenges are more severe, and the work is even greater. In this era of one thousand boats competing to start the race and to catch the current we must not be boastful, complacent, self-sufficient, we must not have the slightest hesitation, we must not be indecisive, we must not be anxious and hesitating, we must be overall in charge of great struggles (*douzhen*), great

²⁶ 事者，生于虑，成于务，失于傲 in the original. This is a reference to the “On Military Taxes” chapter of the *Guanzi*, which section “On Paying Attention to Markets and Production” reads:

The marketplace determines the value of goods. Hence, if goods are kept cheap, there will be no exorbitant profits. If there are no exorbitant profits, production will be well organized, and if it is well organized, expenditures will be properly controlled. *Now production materializes through planning, succeeds through diligent attention, but fails through negligence.* Unless there is negligence, there will be no failure. Therefore it is said that the marketplace may know order or disorder, abundance or scarcity. However, it is incapable of bringing about abundance or scarcity on its own. There is a proper way to manage markets and production.

W. Allyn Rickett, *Guanzi, Political, Economic and Philosophical Essays From Early China, Volume I, Revised Edition*, Boston: Cheng & Tsui Company, 2001, p. 119. Italics mine.

works, great causes, great dreams, and bravely and dauntlessly fight.

Belief, faith, and confidence are always of utmost importance. As long as there will be belief, faith and confidence, [entities] as small as an individual, a group, as big as a political party, an ethnicity, a country, will respond to obstacles by exerting greater efforts, and they will respond to battles by becoming bolder, otherwise we would defeat ourselves without fighting, collapse without being struck. Regardless of the past, the present or the future, belief in Marxism, faith in Socialism with Chinese characteristics, confidence in realizing the Chinese Dream of the Great Rejuvenation of the Chinese Nation are all powerful spiritual forces that support the Chinese People to stand up, to become rich, and to become strong!

Comrades, friends!

For forty years *raging waves have crashed on the shore*,²⁷ and *the mythical Peng Bird rides the wind, flying high for nine-thousand li*.²⁸ The reason why rivers can rush out of cliffs is because of the force they have accumulated through thousands of mile. In the endless progress of history, since modernity, the Chinese People has experienced too much hardship, made too many sacrifices, performed too much hard work. Now, the powerful force the Chinese People and the Chinese nation have accumulated through the progress of history has fully erupted,

²⁷ 惊涛拍岸 in the original. This is a verse from the Tang Dynasty poem “Missing the Songstress – Remembering the [Battle of] Red Cliffs” by Su Shi (1036-1101). Fought between the overwhelming forces of Cao Cao on one side, and those of Sun Quan and Liu Bei, the Battle of Red Cliffs gradually led to the end of the Han dynasty, and the beginning of the period of the Three Kingdoms.

²⁸ 九万里风鹏正举 in the original. This is a reference to the mythical Peng bird:

“In the Northern Darkness there is a fish and his name is Kun. The Kun is so huge I don’t know how many thousand li he measures. He changes and becomes a bird whose name is Peng. The back of Peng measures I don’t know how many thousand li across and, when he rises up and flies off, his wings are like clouds all over the sky. When the sea begins to move, the bird sets off for the southern darkness, which is the lake of Heaven”.

Robert Elliott Allinson, *Chuang-Tzu for Spiritual Transformation: An Analysis of the Inner Chapters*, p. 41.

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providing an unstoppable and inexhaustible strength for the Great Rejuvenation of the Chinese Nation.

Building a strong country of socialist modernization and realizing the Great Rejuvenation of the Chinese Nation is a relay race. We must run one after the other, and every generation must obtain a good result for the next generation.

The whole Party and the People of all ethnicities must more closely unite around the Party Central Committee, hold high the great banner of Socialism with Chinese characteristics, never forget their Original Intent, bear in mind their mission, carry out reform and opening up until the end, and constantly look forward to realize the People's yearning for a better life, and create the new miracle of the Chinese nation in the New Era! Create new and bigger miracles that make the world have an entire new level of respect [for us]!

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C. Article 3

Xi Zhongxun Speech at the Forum Commemorating the Sixty-Seventh Anniversary of the “May Fourth” Movement (3 May 1986)

Flora Sapio, translator

习仲勋在纪念“五四”运动六十七周年座谈会上的讲话

习仲勋

青年朋友们，同志们：今天，我参加这个座谈会，同各界青年代表一起庆祝“五四”青年节，感到很高兴。我代表中共中央和国务院，向你们，向全国各族青年，表示热烈的祝贺！

一九一九年发生的“五四”运动，是我国历史上一次反帝反封建的伟大革命运动。“五四”革命精神，一直鼓舞着我国青年前进。什么是“五四”革命精神呢？概括起来就是：爱国主义的精神，倡导民主和科学的精神，青年知识分子同工农相结合的精神。我们今天纪念“五四”，就是要求广大青年结合新的历史条件，发扬光大“五四”革命精神，更加紧密地团结在党和政府的周围，为建设高度文明、高度民主的社会主义现代化国家作出新的贡献。为此，我们对广大青年提出几点希望：

第一，要积极参加改革。改革是我们建设具有中国特色的社会主义的必由之路。当前，经济、科技和教育体制改革，正在城市和农村深入发展。广大青年工人、青年农民、青年知识分子和其他劳动青年，一定要认真学习领会改革的目的、意义、方针和政策，以主人翁态度参加各项改革。这也是新形势下发扬社会主义民主的一种要求。前几天，《工人日报》发表了鞍钢一位青年工人的万言建议书，就工厂的改革、生产、经营、管理和思想政治工作，向厂领导提出了一系列很有见地的建议。一位普通工人，这样关心改革大局，关心国家富强，关心企业命运，是难能可贵的。这种主人翁精神，应当大力提倡。广大青年职工和青年农民，处在工农业生产第一线，对搞

好改革有很高的热情。应当鼓励他们解放思想，勇于探索，大胆实践。各级领导者应当重视青年人的改革建议，热情支持各种符合改革要求的创举。在改革的过程中，广大青年还要学会正确认识和处理国家、集体、个人三者利益关系，自觉地把国家利益放在首位。广大青年这样做了，就会有力地促进改革的健康发展。

第二，要出色做好本职工作。去年全国团代表会议报告中有一句话，叫做“创四化大业，应当立足本职岗位，争创一流成绩”。我认为，这句话讲得很好。大家知道，六届全国人大四次会议刚刚通过的“七五”计划，是个很好的计划，但是计划再好，只有经过我们在各自具体岗位上努力实践，才能把它变为现实。所以，工业、农业、科技、文教、卫生、财贸等各条战线的广大青年，一定要按照“七五”计划的要求，围绕本行业、本单位的奋斗目标，在本职岗位上创造第一流成绩。青年是各条战线建设的生力军，大家都在平凡的岗位上作出不平凡的成绩，那么，我们“七五”一定会比“六五”干得更好！为完成“七五”计划和实现四化而建功立业，这就是我国当代青年应有的爱国主义壮举。

第三，要踊跃参加社会主义精神文明建设。青年人，富于理想，接受新事物快，对精神生活有多方面的需求，是建设精神文明最活跃的力量之一。近几年来，广大青年倡风气之先，例如：城市的职工读书讲演活动，农村的帮困扶贫活动，部队的英模报告团活动，学生的街头咨询服务活动等，这些都是首先由青年工人、青年农民、青年战士、青年学生干起来的，对全社会的精神文明建设起到了很好的作用。对广大青年在精神文明建设中的地位、作用和主流，必须充分肯定。同时，也必须指出，在对外开放和对内搞活的新形势下，青年在理想、纪律、道德等方面，还存在这样那样不容忽视的消极现象，要认真克服。广大青年要继续努力学习科学文化知识，熟练地掌握劳动技能，并且逐步养成文明、健康、科学的社会主义生活方式。要在青年中大力普及法律知识，做到人人学法、知法和守法；大力加强职业道德教育，增强劳动纪律，纠正带有行业特点的不正之风；大力加强婚姻家庭道德修养，提倡正确的恋爱观，发展平等和睦的家庭关系。在农村要注意破除封建迷信、买卖婚姻和红白喜事大操大办、铺张浪费等陈规陋习。我们相信，广大青年，一定会把自己锻炼成为有理想、有道德、有文化、有纪律的新一代。

青年知识分子要自觉地同工农相结合。青年知识分子有较多的文化科学知识，思想敏锐，创新精神较强，弱点是缺乏实践锻炼，容易脱离实际。一切有作为的青年知识分子，应当自觉地

向工农学习，同工农相结合，同实际相结合。既勇于“向上攀登”，努力学习马克思主义；又勤于“向下深入”，广泛联系群众和实际。只有把自己的理想和追求，扎扎实实地同党和人民的利益紧密联系在一起，把自己的聪明才智投入到解决经济、政治、文化、社会等实际问题中去，才能使自己在更广阔的领域内经受锻炼、增长才干，成为祖国需要的合格人才。广大团干部担负着带领和组织团员、青年开展活动的光荣任务，在与工农相结合等方面，都应当走在前头。

最后，我想引用两句古诗：“桐花万里丹山路，雏凤清于老凤声。”这是唐代诗人李商隐写的，说的是桐花盛开的时候，小凤凰唱出了比老凤凰更为清亮的歌声。我想借用这两句诗，寄希望于我国的年青一代。希望你们团结一致，在社会主义现代化建设中，创造出比我们老一辈更加辉煌的业绩！

Speech at the
 Forum Commemorating the
 Sixty-Seventh Anniversary of the “May Fourth” Movement¹

Xi Zhongxun

(May 3, 1986)

Young Friends, Comrades: today, I am very happy to participate to this Forum to celebrate, together will the Youth's delegates from all walks of life, the May Fourth Youth Day. On behalf of the Central Committee of the Chinese Communist Party and of the State Council, I would like to extend warm congratulations to you, and to the young people of all ethnic groups of China! The “May Fourth” movement that took place in 1919 is a great revolutionary movement against imperialism and against feudalism in the history of our country. The spirit of the “May Fourth” revolution has always encouraged the young people in our country to move forward. But what is the spirit of the “May Fourth” revolution? Generally speaking it is the spirit of patriotism, the spirit of advocating democracy and science, the

¹ Originally published on page 1, of the 4th May 1986 issue of the People's Daily, and reprinted in Xi Zhongxun, *The Selected Works of Xi Zhongxun (Xi Zhongxun wenxuan)*, Beijing: Zhongyang Wenxian Chubanshe, 1995, pp. 423-426.

spirit of binding together young intellectuals, workers and peasants. Our commemoration, today, of “May Fourth” is to require the vast majority of young people to relate to the new historical conditions, to carry forward the spirit of the “May Fourth” revolution, to more closely rally around the Party and the government, to make new efforts to construct a modernized socialist country that is highly civilized and highly democratic. To this end, I have several hopes for the vast majority of young people:

First, they must actively participate in reform. Reform is the only way for us to build a socialism possessing Chinese characteristics. At the moment, systems reforms in the economy, science and technology, and education are undergoing an in-depth development in urban and in rural areas. The vast majority of young workers, young farmers, young intellectuals and other working youth must diligently study and understand the goals, meaning, direction and policies of reform, and participate to all various reforms with the attitude of masters. This is also a requirement for promoting socialist democracy in the new circumstances. A few days ago, the “Workers’ Daily” published the 10,000 characters proposal of a young workers from Angang, presenting a series of insightful suggestions about reform, production, operation, management to the factory leaders. An ordinary worker, who cares in such a way about the overall situation of reform, about the strength and prosperity of the country, about the future of the enterprise is rare and precious. Such a spirit of ownership should be vigorously promoted. The vast majority of young manufacturing workers and young peasants are at the forefront of industrial and agrarian production and have a high enthusiasm for reform. They should be encouraged to emancipate their minds, dare to explore, and be bold in their practice. Leaders at all levels should pay attention to the reform proposals of the youth, and warmly support all those various initiatives that meet the needs of reform. In the process of reform, the vast majority of young people must learn correctly understand and treat the interest relation between the three interests of the state, of the collective, and the People, and willingly place the interest of the state first. By doing so, the vast majority of young people will vigorously promote the healthy development of reform.

Second, one’s job must be done well. In last year’s report of the National Youth Leagues’ Delegates there was a sentence: “the

creation of the great cause of the Four Modernizations should be based on striving for first-class results in one's own work". I believe that this sentence is very good. As you know, the Fourth Plenary Session of the Sixth National People's Congress just adopted the Seventh Five-Years Plan. This is a very good plan, but no matter how good the plan is, it can be made a reality only through our practical diligence in our specific positions. Therefore, the vast majority of young people in industry, agriculture, science and technology, education, health, finance and trade and any other front must be sure to follow the requirements of the Seventh Five-Years Plan, the struggle objectives concerning their own industry, their own work-unit and create first-class successes on their own posts. Young people are the new force for the construction of all fronts, and we are achieving extraordinary successes through our ordinary work. Therefore, with the Seventh Five-Years Plan we will do a better job than we did with the Sixth Five-Years Plan. The heroic patriotic undertaking of our contemporary youth is completing the Seventh Five-Years Plan and contributing to the achievement of the Four Modernizations.

Third, actively participate in the construction of socialist spiritual civilization. Young people are full of ideals, and they quickly accept new things. They have multiple needs for spiritual life and are one of the most active forces in building a spiritual civilization. In recent years, the vast majority of young people have advocated trends such as: teaching and lecturing offered to urban manufacturing workers, poverty alleviation activities in rural areas, military model report groups, and street counseling services for students. These have all been organized first of all by young workers, young peasants, young soldiers, young students, and have been very useful to the construction of a socialist spiritual civilization. The place, role and main current of the construction of a socialist spiritual civilization for the vast majority of young people must be affirmed. At the same time, it must also be pointed out that under the new situation of opening up to the outside world and domestic invigoration, young people display negative phenomena in their thought, discipline and morality, phenomena that cannot be ignored, and that they must be resolutely overcome. The vast majority of young people must continue to work diligently to earn scientific, technological and cultural knowledge, skillfully master technical abilities, and gradually develop a civilized, healthy, scientific socialist lifestyle. We must vigorously popularize legal

knowledge among the vast majority of young people, so that everyone can study the law, know the law and abide by the law. We must vigorously strengthen education in professional ethics, strengthen labor discipline, and correct those unhealthy practices that display characteristics specific to their industry. We must vigorously strengthen the moral cultivation of marriage and the family, promoting a correct outlook on love, and develop equal and harmonious family relationships. In rural areas, attention should be paid to eliminating feudal superstition, arranged marriages, and red-and-white wedding ceremonies, extravagance and waste. We believe that the vast majority of young people will definitely train themselves into a new generation with ideals, with morality, with culture and discipline.

Fourth, young intellectuals should willingly integrate with workers and peasants. Young intellectuals have a lot of cultural and scientific knowledge, are sharp-minded, and have a strong spirit of innovation. Their weakness is that they lack practical training and are easily separated from reality. All talented young intellectuals should willingly learn from workers and peasants, integrate with workers and peasants, and integrate with reality. They should not only dare to “climb up” and work hard to learn Marxism. They should also diligently “descend deep down”, making extensive contact with the masses and with reality. Only by firmly linking our ideals and pursuits with the interests of the party and the people, and putting our ingenuity and wisdom into solving practical problems such as economic, political, cultural, and social issues, can we make ourselves more broadly In the field, they have undergone training and growth, and have become qualified personnel required by the motherland. The broad masses of cadres bear the glorious task of leading and organizing the activities of youth members and youths, and they should be at the forefront in integrating with workers and peasants.

In the end, I would like to quote two verses from an ancient poem: “Ten thousand miles away on the path to Mount Dan, the song of the young phoenix on the Tong tree is clearer than the song of the old phoenix.” This was written by Tang poet Li Shangyin, and it says that when the Tong tree was in full bloom, the chant of the young phoenix was much clearer than the chant of the old phoenix. I hope you will unite as one, to create a performance in the construction of socialist modernization, that

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will be much more brilliant than the performance of the older generation!

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C. Article 4

Commentary on Xi Jinping, Speech at the Meeting Celebrating the 40th Anniversary of Reform and Opening Up

Flora Sapio

The CCP General Secretary speech commemorating the 40th anniversary of the launch of the policy of reform and opening up is a tradition that was introduced by Jiang Zemin in 1998.¹ Deng Xiaoping did not give a speech commemorating the policy he himself had launched. Doing so would have gone against about his stated beliefs about the dangers posed by constructing a cult around the personality of political leaders. Hu Jintao followed the tradition created by Jiang Zemin, by delivering a speech in December 2008.²

The speech pronounced on the decennial anniversary of the launch of reform and opening up is a solemn occasion, because 1978 marked one of the crucial turning points in the history of the People's Republic of China. The longer-term outcomes and consequences of that turning point are still visible today. The commemorative speech does not follow improvisation. It is rather modelled after a standard format, composed by five sections. In the opening section of the speech, the General Secretary of the Chinese Communist Party recalls the historical events that lead to adopting the policy of reform and opening up

¹"Jiang Zemin Speech at the Meeting Commemorating the 20th Anniversary of the Third Plenum of the Eleventh Central Committee" (*Jiang Zemin zai Zhonggong zhongyang dishiyi jie sanzong quanhui 20 zhounian jinian dahuishangde jianghua*), Communist Party of China News (*Zhongguo Gongchandang xinwenwang*), 7 November 2008, available at <http://theory.people.com.cn/GB/40557/138172/138173/8302188.html>.

²"Hu Jintao Speech at the Meeting Commemorating the 30th Anniversary of the Third Plenum of the Eleventh Central Committee" (*Hu Jintao zai jinian shiyi jie sanzong quanhui zhaokai 30 zhounian dahuishangde jianghua*), China News (*Zhongguo Xinwenwang*), 18 December 2008, available at <http://www.chinanews.com/gn/news/2008/12-18/1492872.shtml>

to the outside world, and describes the policy launched by Deng Xiaoping. The second section lists the most important reform measures enacted until his tenure. The third section relates them to the current state of China. The fourth section lists future goals and priorities and elaborates upon them. The closing section of the speech offers a summary of previous sections, exhorting the audience to act upon the political priorities set by the Party, and announced by its General Secretary. It has become more or less customary to informally argue that the policy goals and priorities announced by the General Secretary of the CCP are just “statements of intention”, or that the real priorities in China in reality are not those announced by the General Secretary of the CCP. These informal arguments might sometimes reveal a lack of knowledge of the developmental line set by the Chinese Communist Party, of its goals and its objectives.

The Anniversary Speech delivered by Xi Jinping follows the same format as the speeches given by Jiang Zemin and by Hu Jintao. Some parts of Xi Jinping’s Anniversary Speech are closely modelled after the wording adopted by Jiang Zemin and Hu Jintao. Other sections of the 2018 Anniversary Speech are substantially different. This comment does not have the goal to present a detailed comparison and analysis of each one of the points of textual convergence or divergence among the three commemorative speeches. Neither it has the goal to compute words. To understand the anniversary speech, considerations about the various layers of meaning it contains are more important, because not everyone has the ability to access each one of the different level of meanings encoded in this (and also in other) speeches.

The Anniversary Speech can be read on at least ~~eight~~ different levels, all of which are anchored to actual features, structural and linguistic elements of this text, and of all the other texts the Anniversary Speech “communicates with”.

Level #1. The Literal Level. The speeches of Xi Jinping, and more generally speaking other documents issued in the People’s Republic of China are often read exclusively on this level. This is the basic level of meaning, and it is important to obtain information about the content of the speech, or of any other document. Reading the anniversary speech according to its

literal meaning and attributing a value to its contents are, however, two entirely distinct operations.

Level #2. Space. Not all speeches are addressed to the same public, and not all documents are addressed to a broad audience. Some speeches and documents are produced for general consumption. Others can be addressed to an audience limited on the basis of rank, or according to other criteria. The anniversary speech is different, because it is addressed to a general audience. This audience can be limited to the domestic public, or include the global public – understood as all those persons who live outside of the People’s Republic of China, and to whom the speech is addressed. Those who live in countries that have joined the Belt and Road Initiative, but also those who invest in China, or trade with Chinese partners, and those who live in countries that are indirectly touched by the Belt and Road Initiative are among the addressees of the anniversary speech.

The position of an individual within domestic social hierarchies is, in this case, relatively unimportant. The effects produced by the policy of opening up and reform can be seen, and directly experienced, by the member of every social class. Social class can only act as a sieve that filters out and blocks certain effects, allowing other effects to pass through. Jiang Zemin and Hu Jintao addressed an audience composed by “comrades” (*tongzhimen*). Xi Jinping instead addressed his speech to “comrades” and to “friends” (*pengyoumen*). This choice of wording signals how the political, ideological and policy content of the speech should concern not only members of the Chinese Communist Party, Chinese persons who are not members of the Party and yet support its goal. The speech is important for everyone. The emphasis on the transnational nature of reform and opening up was not absent from the speeches of Jiang Zemin and Hu Jintao. But, while they acknowledged the importance of global peace and global economic stability for China’s development, neither Jiang nor Hu Jintao addressed a global audience.

Level #3. History. In uttering the Anniversary Speech each General Secretary of the Chinese Communist Party has presented itself as continuing a political tradition inherited from his predecessors. If textual overlaps can be found among the speeches, differences exist too. Differences are inextricably embedded within the highly canonized codes of contemporary Chinese political language. Textual and semantic differences do

not signal an individual's attempt to overcome established norms of political leadership and political development. They rather point to the specific measures each generation of leaders intends to take to realize the broader goal of Socialist Modernization.

In and of itself, this goal harks back at ideals and notions already expressed by early Chinese reformers as Kang Youwei and Liang Qichao. The Anniversary Speech can signal a will to endorse and further develop policies launched by one's own predecessors. Alternatively, it can point to the need to reconsider those policies in light of their results. The criterion adopted to decide whether specific policies need to be further developed, altered or shelved, however, is what is called "practice". "Practice" itself is a word that can refer to several meanings, but in one of its simplest senses it has the connotation of "the concrete results and benefits produced by something".

Level #4. A Text Talking to Other Texts. No text can exist in isolation. Texts always "talk" to each other. The single and most important "texts" the anniversary speech talks to is given by the works of Deng Xiaoping enshrining the conceptual elements of the policy of reforming and opening up to the outside world. This feature is common also to the speeches of Jiang Zemin and Hu Jintao. Jiang Zemin's speech opened by providing an historical overview on the policy of reform and opening up, and on the main reforms in ideology and economy implemented after 1982. The opening section of Hu Jintao's speech contained a shorter summary of the developments that followed the Third Plenary Session of the Eleventh Central Committee. Hu Jintao almost immediately proceeded to list all the major tasks fulfilled during the three previous decades.

The 2018 anniversary speech follows the same structure, but with an important difference. After the describing the 1978 reforms, the remaining part of the opening section of the 2018 anniversary speech "talks" to the Statute (or Charter, or Constitution) of the Chinese Communist Party. These parts of the speech are almost entirely modelled on certain paragraphs of the Statute. In their Anniversary Speeches, neither Jiang Zemin nor Hu Jintao placed the same emphasis on the General Program. Xi Jinping instead quotes the General Program almost literally, and yet some differences and additions exist between the original text of the General Program, and the General

Program as invoked by Xi Jinping in his speech. A detailed examination of these goes beyond the scope of my brief comments.

Level #5. Political “Formulas” and “Acronyms” (*tifa*). A further level of meaning is given by all the political “formulas” and “acronyms” mentioned in the speech. To the reader who is not familiar with their literal (and not only literal) meaning, abbreviations as “the four kinds of confidence”, and others can act as obstacles, that delay or even preclude the comprehension of the text. These acronyms can function as “triggers” that “protect” the text from those who try to access it absent an existing knowledge of all relevant “acronyms”, or a will to invest their time and efforts in earning that knowledge. Else, they can allow access to other dimensions of the text. For instance, in the first part of the speech Xi outlines the main goals of celebrating the 40th anniversary of the reform and opening up policy. These are realizing the objectives of the “Two Centenaries”, and the China Dream of a Great Rejuvenation of the Chinese Nation. These codewords refer to two closely related policies. The Two Centenaries (*liange yibai nian*) are development objectives proposed by Jiang Zemin in 1997,³ endorsed by Hu Jintao,⁴ further developed by Xi Jinping, and incorporated in the

³“In looking at the coming Century, our objectives are (...) accelerating the development of national economy, and the completion of all systems by the centenary of the founding of the Party; basically realizing modernization, and establishing a wealthy and strong, and democratic and civilized Socialist State by the first centenary of the founding of the nation, in the middle of the next century”. Jiang Zemin, “Hold High the Great Banner of Deng Xiaoping Thought, Comprehensively Push Forward the Cause of Constructing Socialism with Chinese Characteristics into the 21st Century” (*Gaoju Deng Xiaoping lilun weida qizhi, ba jianshe you Zhongguo tese shehuizhuyi shiye quanmian tuixian ershiyi shiji*), Report at the Fifteenth Congress of the Communist Party of China, 12 December 1997, available at http://www.gov.cn/test/2007-08/29/content_730614.htm

⁴“We are already making the first steps towards the goal, set by the sixteenth Party Congress, of comprehensively establishing a moderately prosperous society. From today on, we should continue to diligently struggle, to guarantee that the struggle objective of comprehensively establishing a moderately prosperous society is realized by the year 2020.” Hu Jintao, “Hold High the Great Banner of Socialism with Chinese Characteristics, Struggle to Seize the New Victory of Comprehensively Establishing a Moderately Prosperous Society – Report at the Seventeenth Congress of the Communist Party of China”, (*Gaoju Zhongguo tese shehuizhuyi weida qizhi, wei duoqu quanmian jianshe xiaokang shehui xin shengli er fendou – zai Zhongguo Gongchandang di shiqici quanmian daibiao dahui shangde baogao*), 15 October 2007, available at <http://19.buaa.edu.cn/info/1007/1101.htm>

Constitution (or Charter, or Statute) of the Communist Party of China in 2018.

The first centenary refers to the 100th anniversary of the founding of the Communist Party of China, in 2021. By this point in time, China should double its level of per capita income, and complete the reform of its governance system. The second centenary refers to the 100th anniversary of the People's Republic of China, in 2049. By this year, China should complete the modernization process, and establish a strong and wealthy socialist society. Achievement of these development goal should lay the foundation for the "Chinese Dream". The "Chinese Dream" is another, and much discussed, codeword which if correctly understood will reveal yet another dimension to the anniversary speech.

Level #6. Poetry, allegory, metaphor and other forms of indirect speech. These levels of meaning are accessible through familiarity with the entire history of China; the ability to read classical Chinese, poetry, and the knowledge of traditional idioms (*chengyu*) and what they refer to. The Anniversary Speech contains several forms of indirect speech. These more "esoteric" meanings can be highly ambiguous. They, too "defend" the text from attempts at "intrusion" by certain groups and categories of readers. To them, poetry will just be poetry, and literary references will just be literary references. Once properly read and contextualized, the verses and historical episodes recalled in the speech will reveal important sub-texts, many of which are highly ambiguous. The ambiguity of these sub-texts can be untied only by the person who chose to use them. In the absence of a clear, incontrovertible, explicit statement of authorial intention these texts should not be interpreted or presented to the public. The risk, for the interpreter, is to fall prey of these ambiguities.

Level #7. "Theory". Theory is to be understood in the sense this word has within the worldview of Marxism-(Leninism). "Theory" means the scaffolding of concepts that have been created, used, and periodically revised in order to implement the vision of Karl Marx – the creation of a Communist society. Xi Jinping refers to Mao Zedong Thought as a "scientific system (...) that must be completed and accurately mastered". The reference to Mao Zedong Thought occurs in the fourth paragraph of the Anniversary Speech. This paragraph is closely modelled after

the second paragraph in Jiang Zemin's speech, and the third paragraph in the speech by Hu Jintao. Both General Secretaries gave the same characterization of Mao Zedong Thought. The development of Maoism, however, does not appear among the eleven political and policy priorities listed in Jiang Zemin's commemorative speech. Also, Hu Jintao listed the sinification of Marxism as the first priority to be achieved in continuing the reform process initiated by Deng Xiaoping, mentioning how ideological innovation should guide China's reform.

Hu Jintao mentioned the "major strategic thought of the scientific outlook on development" as one of the components of Socialism with Chinese characteristics, defining it as the newest result of the sinification of Marxism. For Hu, the path to theoretical innovation started by realizing the importance of systems of regulation for Party governance, the construction of socialism, and the development of human society. An awareness of the role regulatory systems played in governance should have driven a modernization in the concepts, systems, and methods of governance. Such a modernization would have been possible only by letting go of wrong, literal and dogmatic, subjective, and metaphysical interpretations of Marxism. Hu Jintao advocated in favor of using practice to critically look at Marxism. Hu Jintao pointed out the need for all Party members to see themselves and see the world from an entirely different perspective, one that took into account the realities of China, as well as the externalities caused by relying on originalist interpretations of Marxism, and by the refusal to conduct oneself in ways compatible with the broader principles of Marxism as a political philosophy.

Xi Jinping maintains a strong continuity with the position articulated by Hu Jintao. But, he also adopts his own distinct approach to completing Mao Zedong Thought and promoting the sinification of Marxism. To Xi Jinping, both Marxism and Leninism are historically true doctrines. But, Marxism can be conceptually separated from Leninism. Also, Xi acknowledges the fundamental importance of Scientific Socialism, a doctrine seldom mentioned in official speeches before 2012. Having outlined his conceptual premises, Xi Jinping can move on, and explain why the sinification of Marxism is necessary, and also suggest how the sinification of Marxism will take place.

For Xi Jinping, the sinification of Marxism is a historical responsibility of members of the Chinese Communist Party. The use of this wording in the Anniversary Speech signals that the development and the completion of Mao Zedong Thought and the sinification of Marxism occupy a more central role than they ever did in the period from 1989 to 2012. Xi Jinping's approach to these tasks is grounded in history, more than in individual attempts to rise above one's epistemic and interpretive limitations. In explaining how ideological innovation has no limits, Xi Jinping quotes from Communists texts relatively less known to the general public than the Communist Manifesto. He uses Engels' *Socialism: Utopian and Scientific* to cut the Gordian knot of how individuals should come to a different understanding of Marxism, and set a general criterion that ought to drive ideological innovation:

“the final causes (...) are to be sought, not in men's brains, not in men's better insights into eternal truth and justice, but in changes in the modes of production and exchange”

The updating of ideology, and its alignment to conditions that exist in the real world, should be driven by practice. Coherent with Engels, practice is understood as the ways in which the production of goods and services, domestic and transnational trade, are organized and take place in contemporary societies. To Xi Jinping, the flourishing of Chinese Marxism depends on an ability to consider how these global trends have been active over the long term, and on a systematic effort to adapt them, and use them to promote the well-being of the persons who live in the People's Republic of China.

Level #8. Silence. In talking about words and language, the Guiguzi (*zi*: any person who has to be addressed and talked to in a respectful way), (*Guigu*: a place known as the Valley of Daimons) employed the metaphor of the “door”. Language is like a door, a door that can be opened by silence, shut down by discourse (or the other way around), or also left ajar. The anniversary speech “talks” also on this level, through the omission of certain references, or even through its silence.

C. Article 5

Toward New Era Thought: Reflections on Xi Jinping, Speech at the Meeting Celebrating the 40th Anniversary of Reform and Opening Up

Larry Catá Backer



1. Introduction

The 40th anniversary of the start of a great historical era also marks its passing. Xi Jinping's Speech on the 40th anniversary of the commencement of the Chinese Reform and Opening Up Era¹ serve as a eulogy for its passing, and as a visionary statement of the New Era to which it has necessarily given birth. To understand the 40th Anniversary Speech it is therefore necessary to view it from the great distance of historical movement; to see in it an effort to extract truth from facts; and ideological coherence from its necessary interaction with the contemporary realities of Marxist-Leninism in a time of great dynamism.

The speech, then, can be most usefully understood as built around three tasks, each of which poses its own set of questions. The first is to deliver a eulogy for the passing Era, the

¹ 习近平：在庆祝改革开放 40 周年大会上的讲话, 18 December 2018 新华网 [Xi Jinping: Speech on the 40th Anniversary of Reform and Opening Up, hereafter Xi Speech] available http://www.xinhuanet.com/politics/leaders/2018-12/18/c_1123872025.htm

legacy of which must be respected as a core element of the foundation of Chinese Marxist-Leninism. In that respect, the Era of Reform and Opening Up, with Deng Xiaoping as its core, now officially joins the Revolutionary and Founding Eras, with Mao Zedong at their core. That eulogy, in turn, requires confronting the question of the manner of preserving its fundamental coherence and legitimating role while recognizing its inevitable development within both historical and national contexts. The second is to describe (this is an intensely political exercise) the evolving facts that mark the fundamental character of the emerging “New Era” era as distinct from that of the passing Era of Reform and Opening Up.

This task is built around the question of narrative view, of describing how the core of Chinese leadership projects its view of the world within which the evolving political theory of Marxist-Leninism must be expressed to suit the times. This was, of course, the only task that provided some interest at the time of the making of the speech, but it will be examined here within its broader theoretical positioning. The third and probably most important task was to then “apply truth to facts”—that is, to draw on the passing of the Reform and Opening Up Era in the national and historical realities in which Chinese Marxist Leninism finds itself to begin to flesh out the answer to the question—“what is What is New Era Thought?

That is the task of the first two paragraphs with which Xi Jinping opens his remarks—eulogy for the passing of an era; an assessment of the context in which the new era emerges; and a *paean* for the New Era that has emerged from that passing in the current historical context. And these are the underlying objectives of the Speech; it does not merely mark an anniversary, but uses that occasion to mark the passing Era and delineate the characteristics of the era that follows. Yet that also signals an important ideological element of Chinese Marxism-Leninism—its embrace of the notion of the bifurcation between core ideological principles, and those elements of the vanguard’s Basic Line that are a contemporary reflection of those core principles applied as required by the times. Core ideological principles produce a coherent baseline for the construction and operation of the political-economic-social system that holds together the political model across historical eras.

2. Eulogy

Xi Jinping identifies the three great eras of the current epoch in Chinese history and in this way underscores the passing of the Reform and Opening Up Era.

The establishment of the Communist Party of China, the establishment of the People's Republic of China, the promotion of reform and opening up, and the cause of socialism with Chinese characteristics are the three major historical events that have taken place in China since the May 4th Movement and are the three major milestones in the realization of the great rejuvenation of the Chinese nation in modern times. (Xi Speech, *supra*).

The Eulogy for the Reform and Opening Up Era starts with the acknowledgement of the necessary movement away from the specular collapse that marked the end of the Founding Era with Mao Zedong at its core. “The inside and outside of the party strongly demanded that the mistakes of the “Cultural Revolution” be corrected, so that the party and the state would rise again from the crisis.” Like all grand historical events, the movement from the Founding Era to the Reform and Opening Up Era could be attached to a specific event, date, time and place. That event, the 3rd Plenary Session of the 11th Central Committee of the CPC, provided the anchoring event for what in retrospect was a successful transition.

But this is not just a banal recitation of well-known history and the acknowledgement of a well-worn politically approved framework of historical categorization. Instead, it serves as an important political template—one that repeats with the passing of every old era. A Marxist Leninist conceptualization of history requires a political sense, and a political rationalization, of the passages of eras. And it is to that transition that Xi Jinping builds an important evolution of Leninist theory:

First, a vanguard party inevitably commits error; more specifically the core leadership of a vanguard can make mistakes. That is of course, something that has floated around the outer edges of Leninist theory (in its European, Caribbean, and Chinese variations) for some time. What is different here, is the connection with the rise of error and its connection with the passing of historical error. That is, one can find in the “fact” of error, the “truth” of the imminence of the passing of a historical

era. That produces an even more profound insight—that error is historically necessary to guide the vanguard and a collective (and under the direction of a new leadership core) toward the reforms necessary to align the vanguard, its working style, and Basic Line to conformity to the realities of the era that is coming. This is underlined by Xi Jinping quite directly: “Historical development has its laws, but people are not completely passive in it. As long as we grasp the historical development trend, seize the opportunity of historical change, work hard, and forge ahead, human society can make better progress.” (Xi Speech, *supra*). Ideological error, then, is structural within Leninist theory and when well understood, not just produces and points to the inevitable necessity of a change of historical era. This double role requires greater theoretical development, but its key insight is already apparent in the opening paragraphs of the speech.

Second, the errors that augur the passing of one era toward another can be both “left” and “right” (as those trajectories are understood within a Marxist Leninist system). In the passage from Founding to Reform and Opening Up Eras, the accumulation of errors, of the failures to conform theory to the facts of the passing of a historical error, were quite decisively those of the “left” kind (“the serious shackles of the long-term “Left” mistakes” Xi Speech, *supra*). And yet, that also suggests another structural element of evolving Leninism—that as easy as the core errors auguring the passing of an era can be “left” error, they might in the passing of a future era be “right” error as well. And, indeed, that sub-text cannot be missed, especially given the context in which the Reform and Opening Up Era itself gave way to the “New Era”—a context, well understood in the late period of the leadership of Hu Jintao, and the subsequent corrections leading to the 19th CPC Congress—of “right” errors. This becomes clearer later in the speech, but the groundwork is laid in the early paragraphs. An accumulation of errors pointing in one direction and threatening the core of the fundamental historical premises of vanguard legitimacy can point either toward the left or the right.

Third, the modalities of correction that produces the great event marker of a shift between eras, must be undertaken in the context of “falling back.” This falling back is also structural. Xi Jinping noted its character in the movement from Founding to Reform and Opening Up Eras as grounded in a return to the core ideology of the prior eras and their development in the face of historical necessity. Thus, even as left

mistakes were confronted, there was an affirmation that error could only be corrected by a mastery of the core ideology developed in prior eras. The mistakes undertaken under the core leadership of Mao Zedong, then, did not mean that the Thought of Mao Zedong, developed for the Revolutionary and Founding Eras, should also be abandoned as mistaken. The structural principal of “correct” interpretation, suitable to the times (and thus its “scientific” nature) must move to the center of the vanguard’s work at just the time when the accumulation of error (left or right) appear to produce a disjunction between ideology and reality.

Fourth, at the same time, falling back to fundamental ideological “truths” must then be used to develop more contextually relevant expressions of those fundamentals. Here there is an echo, modified of Deng Xiaoping’s answer to his own question “What shall we learn? Basically, we should study Marxism-Leninism and Mao Zedong Thought and try to integrate the universal principles of Marxism with the concrete practice of our modernization drive.”² The caution here is against the exercise in “falling back” as a means of seeking to “return” to an earlier state. Leninism must reject, it is then implied, any embrace of reform that seeks to recreate another time. Time moves forward; the ideology of those who live in time cannot be used to seek to return to a time that cannot be re-created, because even the act of re-creation moves a society forward. “Our party’s historic decision to implement reform and opening up is based on a profound grasp of the future of the party and the country. It is based on a profound summary of the socialist revolution and construction practices. It is based on a profound insight into the trend of the times and is based on the masses of the people.”³

Fifth, the structuralism inherent in the movement from one era to the next is not a passive exercise. Leninism, at its core, posits in the vanguard not merely a duty to act, but also situates the vanguard as the catalyst element in shaping the movement from one era to the next. Xi Jinping notes: “Historical development has its laws, but people are not completely passive in it. As long as we grasp the historical development trend, seize

² Deng Xiaoping, “Emancipate the mind, seek truth from facts and unite as one in looking to the future” (13 Dec. 1978); in Deng Xiaoping, *Selected Works Vol. II (1975-82)* available http://cpcchina.chinadaily.com.cn/2010-10/15/content_13918199.htm

³ Xi Speech, *supra* n. 1.

the opportunity of historical change, work hard, and forge ahead, human society can make better progress.”⁴ That vanguard element has two characteristics. First it suggests the decisive role of those who carry forward knowledge of core ideological knowledge from the prior era. Xi speaks, for example of the critical contribution “and the support of the older generation of revolutionaries.”⁵ But it also suggests that this active role of the collective must be framed around a core. Xi Jinping here begins to read the core premise of Leninist vanguard organizations as an active force that works on and with historical development, as the expression of the collective knowledge and embeddedness in history; and of the decisive role of the core in the process of moving the collective from the error of the end of the prior era to the clarity of the emerging era. And here one confronts a key element of New Era ideology—the central role of the core-collective binary as the key premise of Leninist theory.

Sixth, this transition necessarily has a profound effect on the character of the disciplinary role of the vanguard party respecting its own cadres. It serves as a reminder that no individual, however close to the core of leadership, is above the ideological principles through which the vanguard acquires and retains its legitimacy. It suggests that the relationship between the core and the collective, as this core Leninist organizational binary is replicated throughout the Party and State apparatus is a much more nuanced and complex relationship. And, as such, it suggests two of the most profoundly underdeveloped elements of Leninist theory in the New Era—Democratic Centralism, and the Mass Line.

Seventh, even within a historical Era, the governing ideology (including its core premises) must be subject to constant development. Xi Jinping underlines this *principle of constant evolution* as he outlines the great forward movement even within the fundamental principles of the Reform and Opening Up Era as it progressed from the core leadership of Deng Xiaoping, through that of Jiang Zemin, Hu Jintao, and then as a transition figure, Xi himself—an evolution that occupies a long and prominent place in the Speech. But that historical narrative of the life and progression of the Reform and Opening Up Era also serves to underscore the idea that New Era ideology

⁴ Ibid.

⁵ Ibid.

is also not rigidly fixed (and thus avoiding one of the great errors of Soviet-European Marxist-Leninism). That principle of constant evolution then neatly ties back into the general principle of the connectivity of history for Leninist theory. The Reform and Opening Up Era and its evolution cannot be understood in a vacuum (and thus as well neither can the contemporary New Era ideology). Rather X Jinping starts with the Revolutionary Era and the Founding Era under the core leadership of Mao Zedong from which he extracts the following principles and objectives:

united and led the entire party and the people of all nationalities, and after a long period of bloody struggle, completed the new-democratic revolution. The People's Republic of China was established, the basic system of socialism was established, and the most profound and greatest social changes in Chinese history were successfully realized, laying a fundamental political premise and institutional foundation for all development and progress in contemporary China.⁶

Looking through the rear view mirror of history, Xi Jinping recasts this as the time of experimentation, of foundations, of experience gathering and of preparation.

The same analysis is undertaken for the Reform and Opening Up Era through the lens of the core leadership of Deng, Jiang, and Hu. Deng “basically realized socialist modernization, and successfully created socialism with Chinese characteristics.”⁷ (Jiang “successfully pushed socialism with Chinese characteristics into the 21st century.”⁸ This by bringing back the issue of the CPC more toward the center of its role in socialist modernization and the construction of the country then in the primary stage of socialism. Hu began the process of considering the quality of socialist development as a popular project—bringing a social and moral element to the task and centering the CPC in that task. This was undertaken by:

forming a scientific development concept, grasping the period of important strategic opportunities, and promoting practical

⁶ Xi Speech, *supra*, n. 1.

⁷ *Ibid.*

⁸ *Ibid.*

innovation, theoretical innovation, and institutional innovation in the process of building a well-off society in an all-round way, emphasizing persistence People-oriented, comprehensive, coordinated and sustainable development, forming a general layout of socialism with Chinese characteristics, focusing on safeguarding and improving people's livelihood, promoting social fairness and justice, promoting the building of a harmonious world, and promoting the building of the party's ability to govern and the construction of advanced nature, succeeding at a new historical starting point Upholding and developing socialism with Chinese characteristics.⁹

Eighth, the transitions between era need not be violent but they can involve conceptually sharp breaks. Xi appears that take that role onto himself as the person, under whose core leadership, it was possible first to note the great historical changes that signaled the end of one era and the start of another. That notice, and its response, of course, is now well known, though little understood at the time—the campaigns against “right” and “left” error were in retrospect a strong signal, given Xi’s reading of history and its alignment with Leninist ideology. The start of his leadership was consumed with “left” error in a quite dramatic way, with Bo Xilai.¹⁰ This served as a test, and a means of defining the core characteristics, of the Reform and Opening Up model challenged by the left by way of the so-called Chongqing Model.¹¹

But that did not constitute so much a look backward but the baseline for a look forward and the campaigns against “right” error by Chinese intellectuals, business leaders and cadres. Those errors, also almost a decade in the making, then, served as the foundation from which one could mark the end-of-times for Reform and Opening Up as an Era and mark the time of the emergence of something new. That start was the 18th CPC Congress, which served as the great summing up period. It was from the 18th CPC Congress, then, that Xi Jinping marks the start

⁹ Xi Speech, *supra*, n.1.

¹⁰ See, e.g., Joseph Y. S. Cheng, “The “Chongqing Model”: What It Means to China Today,” *Journal of Comparative Asian Development* 12(3):411-442 (2013); BO Zhiyue and CHEN Gang, *Bo Xilai and the Chongqing Model* (2009), available https://research.nus.edu.sg/cai/wp-content/uploads/sites/2/2017/11/Vol1No3_BoZhiyueChenGang.pdf.

¹¹ See, e.g., Kean Fan Lim and Niv Horesh, “The Chongqing vs. Guangdong developmental ‘models’ in post-Mao China: regional and historical perspectives on the dynamics of socioeconomic change,” *Journal of the Asia Pacific Economy* 22(3):372-395 (2016).

of the New Era (“Socialism with Chinese characteristics has entered a new era. With great political courage and wisdom, we propose that the overall goal of comprehensively deepening reform is to improve and develop the socialist system with Chinese characteristics, promote the modernization of the national governance system and governance capacity, and strive to enhance the systemic, holistic and synergistic reforms, and focus on major issues.”¹²

Thus eulogized, it is left to the core leadership that oversaw the transition to then provide the factual foundation on which the principles of Marxist-Leninism for the New Era is to be framed. The framing is neat—from the 11th through the 18th CPC Congress period. And the core leadership book ends are also neatly drawn—with Deng Xiaoping on one side of history, quickly receding; and Xi Jinping on the other, quickly approaching in his core New Era forms. That bookending then requires only the discipline of theory to provide the context within which it will again be possible to provide political leadership grounded in a stable ideology operating between left and right error in their new historical context. To that end Xi moves from eulogy to stock taking. But this is stick taking with a quite specific purpose. That purpose is to lay a scientific foundation for the (inevitable) character of the core innovations that mark as distinct the Marxist-Leninism of the New Era from that of Reform and Opening Up.

3. From Past to Present; From Reform and Opening Up Made Possible the New Era

To the ends of building a current foundation for the future of the New Era, Xi devotes an extended portion of the speech to the exercise of stock taking over the forty years that was the life span of the passing historical era of Reform and Opening Up.

In the past 40 years of reform and opening up, from the beginning of the new era to the new century, from the new starting point to the new era, 40 years of hard work, 40 years of thorns, 40 years of hard work, our party led the people to paint

¹² Xi Speech, *supra*, n. 1.

a magnificent, imposing The magnificent historical scrolls compose a song of praise and enthusiasm.¹³

Let us consider what Xi Jinping regards as the legacy of the Reform and Opening Up Era. For that purpose, one need only distill the essence of foundation from the historical description of the accomplishments of the Reform and Opening Up Era that forms the bridge in the Speech between the receding and the approaching Eras.

First is the characterization of the great principle of “emancipating the mind” (“When it comes to emancipating our minds, using our heads, seeking truth from facts and uniting as one in looking to the future, the primary task is to emancipate our minds.”¹⁴ From emancipating the mind is derived the principle of pragmatic engagement. One engages in “theoretical innovation, practical innovation, institutional innovation, Cultural innovation and innovation in all aspects” but only when undertaken under the principle of the supremacy of scientific socialism (“persisting in the guiding position of Marxism, unswervingly adhering to the basic principles of scientific socialism.”¹⁵

Second is the central focus of economic development. That is, what was central to the Reform and Opening Up Era was a focus on the development of productive forces understood in economic terms. That embodied the principle that Marxism is not the ideology of poverty. But the measure of economic success was (as it is to some extent in the West) a function of collective analysis and collective characteristics. “At present, China is the world's second largest economy, the largest manufacturing country, the largest country in terms of trade in goods, the second largest country in commodity consumption, and the second largest country in foreign capital. China's foreign exchange reserves rank first in the world for many years, and the Chinese people are rich. The journey to get up and strengthen has taken a decisive step!”¹⁶

Third is simultaneous focus on political development even as the emphasis was placed on economic development. It is here that Xi Jinping views the history of the Reform and

¹³ Ibid.

¹⁴ Deng Xiaoping, *supra*, n. 12.

¹⁵ Xi Speech, *supra*, n. 1.

¹⁶ Xi Speech, *supra*, n. 1.

Opening Up Era through the lens of that of the New Era—an era in which political and cultural development move from the sides to the center. To that end, it is necessary for the Era of Reform and Opening Up to evidence the seeds of the succeeding era. And here (as in the paragraph that follows), this is done by an emphasis on the germination of the CPC’s political and cultural work, which will, in turn, form the central element of the ideology of the New Era. “The socialist legal system with Chinese characteristics has become increasingly sound. The system guarantee and the rule of law guarantee for the people to be the masters of the country are more powerful, the human rights cause is comprehensively developed, the patriotic united front is more consolidated, and the people enjoy and exercise democratic rights in accordance with the law.” (Xi Speech, *supra*).

Fourth is the focus on socialist culture. Here Xi takes the kernel at the heart of Jiang Zemin’s Three Represents and pushes it forward through the Reform and Opening Up Era into the New Era. “For 40 years, we have always adhered to the development of advanced socialist culture, strengthened the building of socialist spiritual civilization, cultivated and practiced the core values of socialism, passed on and promoted the excellent traditional Chinese culture, adhered to scientific theory, and pointed to the correct public opinion.” (Xi Speech, *supra*). But there is more here.

Xi Jinping sees in the emancipation of Chinese socialist culture a mechanism for projecting Chinese achievements abroad. The cultural becomes political—and the political—through the Belt and Road Initiative is transmitted through Silk Roads. But note here the resonance with both European and American notions of cultural power as the foundation of economic success. That is a marker of the New Era extracted from the emancipation of the mind in the old era—the construction of a parallel political-economic-cultural universe that aligns with the fully formed systems of Western liberal democracy. The New Era here as taking the spirit of the West and breathing socialist life into its (now recognizable) form.

Fifth is the core achievement of the Reform and Opening Up Era and its singular focus on the development of economic forces—the tremendous growth of popular wealth. Yet the object was not personal wealth disconnected from the collective. Xi speaks here of a collective element to wealth, and a necessary one on the mandatory path of the CPC toward the establishment

of a communist society in China. That is the assurance of the trappings of a sophisticated welfare state in which collective wealth can be made individually available—at least to some set of minimums. “The problems that have plagued our people for thousands of years are gone forever!”¹⁷ (Xi Speech, *supra*). And yet one cannot help but hear this statement in the context of another equally important one—Xi’s declaration that in the New Era the central contradiction has moved to the problem of the distribution of collective benefit.¹⁸

Sixth is the refocus of socialist modernization from Soviet style production to one grounded in principles of sustainability. Here Xi alludes to the transitional issue of the Reform and Opening Up Era. It had started as a historical Era in which China was required to be a net receiver of capacity building; by its end China had moved to reverse that flow to become a net exporter of knowledge. And in that process China moved to a more vigorous international role—a core element of what will emerge in the principles of the New Era.

Seventh is the old but important element of the control of the military apparatus. But here there is also felt the effects of Reform and Opening Up. The Chinese military has been transformed from a purely defensive role to one of defense of Chinese interests globally, and especially along “its” roads from Beijing outward. That is a fundamental shift—the exteriorization of Chinese notions of territory and control from a physical to a conceptual space. Here, again, the shadow of both the New Era, and of the path already well charted by liberal democratic states is evident. The challenge for the New Era—the creation of a justifiably Chinese and Leninist variation. Noticeable by its absence, and pointing to a possible future contradiction, are the consequences of a self-centered path toward the corrections of humiliations now long musty by a global leader whose own acts of correction might well produce the same sorts of humiliations for others in ways that will underline the leadership role of the state in on the global stage.

¹⁷ Xi Speech, *supra*, n. 1.

¹⁸ “What we now face is the contradiction between unbalanced and inadequate development and the people’s ever-growing needs for a better life,” Xi Jinping, *Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for a New Era: Report to the 19th CPC Congress*, available http://www.xinhuanet.com/english/download/Xi_Jinping's_report_at_19th_CPC_National_Congress.pdf

Eighth is also an issue that serves as a glue binding all prior eras and into the next—the issue of reunification of contemporary notions of the Chinese territorial heartland. Here one is reminded, again, of the power of history, and the long lasting effects of the cultivation of notions of historical humiliations along with the need to overcome them in a quite specific way persists into the New Era. Its pursuit is meant to have “washed away the humiliation of the Chinese nation for centuries.”¹⁹ But the New Era also hints at a broader notion of unification under the leadership of the vanguard. “The sense of national identity and cultural identity of all Chinese people at home and abroad has been greatly enhanced, and the will to build a Chinese dream together is stronger!”²⁰

Ninth is the idea of Chinese Leninist internationalism, one that builds on the hints of ethno-cultural unity of the prior paragraph and then expands it along political-economic lines.

We actively promote the construction of an open world economy, build a community of human destiny, promote the transformation of the global governance system, clearly oppose hegemonism and power politics, and continuously contribute to China's wisdom, China's programs, and China's power for world peace and development. China is increasingly approaching the center of the world stage and has become a recognized builder of world peace, a contributor to global development, and a defender of the international order!²¹

And the last, the tenth, is meant to sum up the entirety of the ideological project. That is the legacy of the centrality of the CPC—of the Leninist vanguard—as the core of collective in politics, economics, society, and culture. In the end, Leninism is founded on the notion of the vanguard as the Alpha and Omega of the political-economic-social order. That vanguard may be tightly constrained by the core principles of its founding ideology and its ultimate task (again, the establishment of a communist society), but it is to the vanguard that political authority, and the power to move the Marxist project forward that all authority is delegated. It is worth considering just how

¹⁹ Xi Speech, *supra*, n. 1.

²⁰ *Ibid.*

²¹ Xi Speech, *supra*, n. 1.

that centrality is framed on the cusp of the New Era. “We are actively exploring the laws governing the Communist Party, the laws governing socialist construction, and the laws governing the development of human society, and we are constantly exploring new realms of Sinicization of Marxism. We insist that the party should manage the party, strictly govern the party, purify the political ecology within the party, adhere to the principle of upholding integrity, vigorously rectify formalism, bureaucracy, hedonism, and extravagance, and severely punish corruption and fight corruption with a zero tolerance attitude.”²² Here there are reminders of the quite distinct rout of Chinese constitutionalism, of the division of authority between vanguard and the apparatus of state, and of the central role of discipline and supervision in context of the vanguard’s ability to control itself. Each of these remain a work in process.

It is within these ten distinct objectives that Xi Jinping can summarize the legacy of the Reform and Opening Up Era. It is to these ten points that the entirety of the prior 40 years may be reduced. That is the last lesson—one that will be as relevant as one will eventually move from the “New Era” to the era that must come after. But it is also a quite important expression of the key principles that not just sum up the Reform and Opening Up Era, but point to its enduring contribution to the ideological development of Chinese Marxist-Leninism in the New Era. None of this is new; but CPC ideology makes that clear; the effect is cumulative and evolving. At the end of the Era of Reform and Opening Up, then, what can these principles be reduced to?

Xi Jinping offered us ten principles: (1) Emancipating the mind is a pragmatic and evolutionary project that pushes the mind outward as well as inward; (2) The project of socialist modernization correctly describes the fundamental obligation of the vanguard, though the character of modernization will vary; (the value of economic growth is projected inward toward the collective and outward toward the world; (3) economic growth is a political project; (4) the political project of economic growth is ultimately a moral project; the tie between material, political, and cultural well-being cannot be separated; (5) economic well-being is both a collective and individual obligation; hungry people do not progress culturally or politically; (6) the long term project of Leninism requires sustainable practices, not just projected inward but also outward; Leninism is

²² Xi Speech, *supra*, n. 1.

internationalism; (7) Military power is another aspect of political authority and an expression of applied ideology within and beyond the state; (8) there can be no forward evolution of theory or practice without undoing the humiliations of the past; (9) Communist internationalism is a key element internal stability and a sign of both the success of the ideological responsibilities of the CPC and its effect in the world; (10) the vanguard is the core of collective leadership; the state is the core of global political leadership; the key leader is the core of the leadership collective; but the responsibility to the collective is the paramount principle of the vanguard—Leninism requires the operation of a strong connection between core and collective at every level and form of societal life. These point as much to the central principles of the New Era as they connect to their genesis and operation in the eras now receding into history.

Lastly, what the Reform and Opening Up Era also produced is the idea that the development of Marxist-Leninist theory is itself a collective enterprise that does not limit itself to nationality or even CPC membership. Though this is a lesson that it has been hard to teach middle and lower level cadres; and though there is sometimes a tendency to forget this central notion—that ideas have no nationality; and that context is a factor rather than a condition—Xi Jinping chose this opportunity to remind the CPC collective, and others, that one of the principal legacies of the Reform and Opening Up Era is that, indeed, the reform and opening up of Marxist-Leninist ideology is no longer merely a matter of national effort.

I sincerely extend my sincere greetings to the compatriots of the Hong Kong Special Administrative Region, the Macao Special Administrative Region, the Taiwan compatriots and the overseas Chinese who have made active efforts for the reform, opening up and modernization of the motherland! I would like to express my heartfelt thanks to all foreign friends and people from all over the world who care about and support China's reform, opening up, and modernization!²³

The relationship is reciprocal. Just as it is possible for global participation in the evolution of New Era thinking (though more

²³ Xi Speech, *supra*, n. 1.

likely in the participation of New Era policy), so it is possible for the New Era development of Marxism-Leninism with Chinese characteristics attuned to the historical stage of Chinese development also have a profound effect on the development of other states and national systems.

The 40 years of practice have fully proved that China's development has provided a successful experience for the developing countries to modernize, demonstrated a bright future, is a powerful force for promoting world peace and development, and is a major contribution of the Chinese nation to the progress of human civilization.²⁴

It will be for later years to figure out how to overcome the contradiction of an inward-looking ideological trajectory with the necessity of Communist internationalism. And Communist internationalism appears to be a key development proceeding from out of the logic of the transition from the Era of Reform and Opening Up to the New Era.

4. Forging the Structures of the New Era

Having provided the eulogy for the Reform and Opening Up Era, and having provided a concise reckoning of the foundation that it provided to the New Era of Chinese Marxist-Leninism, Xi Jinping used the last part of the speech to look forward toward the development of New Era theory. To that end, Xi situates the forward movement within Leninist principles of progress around the driving force of the vanguard collective (under the leadership of its core) and sensitive to the problem of error as a principle of Leninist discipline.

Only by conforming to the historical trend, actively adapting, and actively seeking change, can we walk with the times. . . . The valuable experience accumulated in the 40 years of reform and opening up is a precious spiritual wealth of the party and the people. It is extremely important for the new era to adhere to and develop socialism with Chinese characteristics.²⁵

²⁴ Xi Speech, *supra*.

²⁵ *Ibid.*

To that end Xi offers a nine-part framework for New Era Thought, built under the shadow of the waning Era of Reform and opening Up.

The first part takes up the tenth part of Deng Xiaoping theory—the centrality of the CPC in the political life of the state and in the oversight of the governing theory. “It is precisely because we have always adhered to the party’s centralized and unified leadership that we can achieve a great historical turning point, open a new era of reform and opening up, and a new journey of great rejuvenation of the Chinese nation.” (Xi, Speech, *supra*). To that end, the *problematique* of core-collective relations comes to the fore, as does the centrality of the need for the **CPC collective** to prevent, mitigate and remedy error (a process of governance quite strikingly similar to the evolving compliance-based governance of the liberal democratic camp).

To uphold the leadership of the party, we must constantly improve the party's leadership and make the party's leadership more adaptable to the requirements of practice, the times, and the people. On the issue of upholding the party's leadership, the major principle that determines the future and destiny of the party and the country, the entire party must maintain a high degree of ideological consciousness, political consciousness, and conscious action, and it cannot be shaken.²⁶

This becomes a complicated issue that demands a greater development of several concepts, foremost among them is the Leninist theory of core leadership of collective leadership groups. That remains an important part of the unfinished business of the New Era theory creation, but one central to its success. The elements are there, and there is sufficient guidance to begin to surmise how the concept of core-collective leadership can be developed consistent with the normative principles of Leninism and its core responsibility to Marxist goals.

Second, and connected to CPC leadership, is the dual centering of “the people as the center and constantly realize the

²⁶ Xi Speech, *supra*, n. 1.

people's yearning for a better life.”²⁷ It is here that the formulation of the principle of the rejuvenation of the Chinese nation; the related notion of the China Dream; and the Basic Line's direction to place the people at the center can be elaborated. But more important, perhaps, is the acknowledgement of the central importance of the Mass Line in the exercise of CPC authority.

It is the fundamental purpose of the party that our party comes from the people, roots the people, benefits the people, and serves the people wholeheartedly. We must take the fundamental interests of the overwhelming majority of the people as the fundamental starting point and foothold of all our work, and insist on the support of the people, the disapproval, and the disapproval.

It is the fundamental purpose of the party that our party comes from the people, roots the people, benefits the people, and serves the people wholeheartedly. We must take the fundamental interests of the overwhelming majority of the people as the fundamental starting point and foothold of all our work and insist on the support of the people. Their approval and the disapproval, their happiness or unhappy ought to be taken as the basis for formulating policies.²⁸

This is nothing new; a variation of this statement appears in the General Program of the Chinese Communist Party Constitution. And yet, its connection here with the emerging New Era ideology suggests perhaps a change of emphasis and a change in the character of the Mass Line as it might be applied within the context of the New Era fundamental contradiction that itself is pregnant with Mass Line overtones. And yet, New Era principles and the contemporary principal contradiction appears to focus on the Mass Line in one specific trajectory. “On the way forward, we must always regard the people's longing for a better life as our goal, practice the party's fundamental purpose, implement the party's mass line, respect the people's dominant position, and respect the will expressed by the people in their practical activities.”²⁹

²⁷ Xi Speech, *supra*, n. 1.

²⁸ *Ibid.*

²⁹ *Ibid.*

The third part is also not new, but its emphasis represents a return of sorts. It can be argued that in the rush to emancipate the mind, Chinese intellectuals also emancipated their minds from the constraints, political or theoretical, of Marxism. That emancipation is now considered error. And that error is likely to be disciplined in the first flush of a vigorous New Era theory development phase. The New Era, in contrast to the Era of Reform and Opening Up, will more consciously focus on the way that core Marxist principles constrain the way that knowledge is received and then embedded in the national context.

It suggests that the scope of engagement with received idea will now be ordered on the basis of a different set of judgments. And that it is likely that those judgments will have substantial effects on the working style of the Chinese intelligentsia. Whether it ought to have an effect on intellectuals elsewhere remains to be seen. There are hints in New Era theory that Communist Internationalism may be used to extend the disciplinary element of Marxist-Leninist development. On the other hand, that sort of control is still a tall order for any state or ideological movement—and that becomes a taller order in a global context in which the idea of competition of ideas is still firmly centered.

Developing the Marxism in the 21st century and contemporary Chinese Marxism is the historical responsibility of the contemporary Chinese Communist Party. We must strengthen the awareness of the problem, the consciousness of the times, and the sense of strategy. We should grasp the essence and internal connection of the development of things with a profound historical perspective and a broad international perspective, closely follow the creative practices of hundreds of millions of people, learn from the absorption of all outstanding human civilization achievements.³⁰

The fourth narrows the third. While the emphasis of the developing CPC theory is Marxism, the operational development of that theory is to be centered on the Chinese context, both territorial and historical. The inward-looking character of

³⁰ Xi Speech, *supra*, n. 1.

theory with Chinese characteristics works well within the historical framework of theoretical development. “What to change and how to change must be based on whether it is in line with the overall goal of perfecting and developing the socialist system with Chinese characteristics and advancing the modernization of the national governance system and governance capacity.”³¹ But there will be a challenge balancing the national characteristics from the objective of using theory to develop models for the world. This is a tension that has yet to be confronted, and reference to the achievements of the Reform and Opening Up Era will provide little comfort to those who are charged with the development of a New Era theory for contextual relevance.

The fifth then takes the fourth forward: “we must persist in improving and developing the socialist system with Chinese characteristics and constantly exerting and strengthening our institutional advantages.”³² In the New Era this has some specific characteristics. This includes developing the public sector and protecting state owned enterprises, while providing guidance to the private sector. The key here is that development will be more centrally managed, even if it is not more centrally ordered. The object is to further develop notions of Markets Marxism³³ that do not mimic the private sector driven markets principles of the organization of the liberal democratic states (and of the globalized markets beyond the Belt and Road Initiative zones). But it also means moving forward the quite important projects of endogenous democracy, that is of socialist consultative democracy.³⁴ And it is a moral project as well built around a set of Core Socialist Values whose normative power is likely to substantially increase. But it is also one with internationalist aspirations.³⁵

The sixth speaks to the bending of theoretical principles to a substantially expanded notion of development of productive

³¹ Xi Speech, *supra*, n. 1.

³² Xi Speech, *supra*, n. 1.

³³ Discussed in Larry Catá Backer, “Central Planning versus Markets Marxism: Their Differences and Consequences for the International Ordering of State, Law, Politics, and Economy,” *University of Connecticut* 32(1):1 (2016).

³⁴ Larry Catá Backer and Miaqiang Dai, *Socialist Constitutional Democracy in the Age of Accountability* (问责时代的社会主义宪制民主) (October 23, 2018). Available at SSRN: <https://ssrn.com/abstract=3271731> or <http://dx.doi.org/10.2139/ssrn.3271731>.

³⁵ Xi argued that it was necessary to “strive to create a Chinese culture that shines in the light and shines in the world” Xi, Speech, *supra*, n. 1.

forces. Development remains a principal priority, as it had been in the receding Reform and Opening Up Era. But New Era development is expanded to include all areas—political, cultural, military, and social. Here, responses to the New Era central contradiction come to the foreground (though the speech read as a whole suggests its embedding in other places as well). The technical focus is on supply side structural reform and innovation driven development. These are vague objectives of course, but they at least point in the direction that the principle of development will mean in its operationalization in the New Era.

The seventh touches on the development of human productive forces, what Xi Jinping references as promoting “the building of a community of human destiny.” (Xi, Speech, *supra*). This suggests the shape of communist internationalism in the New Era:

China's development cannot be separated from the world, and the prosperity of the world also needs China. We will coordinate the two major domestic and international situations, adhere to the basic national policy of opening to the outside world, implement a proactive open policy, and form a comprehensive new pattern of all-round, multi-level and wide-ranging areas, creating a good international environment for our country and opening up a broad space for development.³⁶

It is here that one encounters the policy level ambitions of New Era Leninist internationalism theory. Much of the language of Chinese New Era internationalism can be found here in the form of direction for action and objectives for China as a responsible great power. More telling is the connection between this internationalism and the Belt and Road Initiative to which it is bound. And inherent in that thrust is the possibility of a contradiction that will likely emerge well into the emergence of a more refined New Era theoretics.

We must focus on building the “Belt and Road” and work together with all parties to build a new platform for international cooperation and add new impetus to the common development of the

³⁶ Xi Speech, *supra*, n. 1.

world. China will never develop itself at the expense of the interests of other countries, and will never give up its legitimate rights and interests.³⁷

The eight returns New Era theory to the CPC and its administration. This focuses on two principal issues. The first is on the vigor of CPC leadership and the second on party building. Criticism-self-criticism is likely to remain an important element. But the emergence of the Central Commission for Discipline Inspection and the processes for supervision, discipline and inspection remains to be adequately theorized under the principles of the New Era Thought. There is, however, a recognition of the contradictions inherent in the general state of theory in this transition time and the need not merely to manage through the but to confront and overcome them. And of course, the great elephant in the room—the persistent problem of corruption.

The ninth and last is the most interesting. It declares a need to “adhere to the dialectical materialism and historical materialism world outlook and methodology, and correctly handle the relationship between reform, development, and stability.”³⁸ And takes us back to where Xi began—the foundational problem of error in a vanguard Party. That is at the core of the evolution of Leninist Theory, and it remains to be fleshed out in ways that provide sufficient theoretical guidance. As a consequence, all one is left with is generalized declarations and the development of short-lived programs which are mostly reactive in the sense of dealing with error *post hoc*. Conflated here, as well, is the problem of corruption (the use of error as a political and factional tool) as well as a challenge of the theoretical organization of a dynamic core-collective collaboration. All of this is left to the future.

On the way forward, we must strengthen strategic thinking, dialectical thinking, innovative thinking, rule of law thinking, bottom line thinking, strengthen macro thinking and top-level design, adhere to problem-oriented, focus on the prominent contradictions and problems facing China's development, conduct in-depth

³⁷ Ibid.

³⁸ Xi Speech, *supra*, n. 1.

investigation and study, and encourage grassroots boldness.³⁹

The hints of recognition and hopefully of theoretical movements lie ahead. But this is still a long way from the theory necessary to stabilize and extend the utility and structure of New Era Theory.

With that exposition, Xi Jinping begins a short summary. The core of New Era Theory's socialist modernization—but now driven by substantially different criteria, and justified by a different theoretical approach. Here, as has become customary, Xi to faith and reason: "Belief, conviction, and confidence are vital at all times. . . . No matter in the past, present or future, the belief in Marxism, the belief in socialism with Chinese characteristics, and the confidence in realizing the great dream of the Chinese nation's rejuvenation in China are the powerful spirits that guide and support the Chinese people to stand up, get rich, and become a stronger power."⁴⁰ And it is from this perspective that it is possible to situate reform and opening up not just as a specific era in the progress of the political work of the CPC, but as the essence of Chinese culture.

Chinese civilization has become the only splendid civilization in human history that has not been interrupted for more than 5000 years. From the perspective of thousands of years of history, change and opening up are generally China's historical norms. The Chinese nation continues to move towards the future with a stance of reform and opening up. It has a profound historical origin and a profound cultural foundation.⁴¹

The strands woven through the speech now come together. That weaves as a natural and necessary part of the forward movement of Chinese history the development of the Marxist-Leninist political-economic model generally. But within that historical necessity is another, the forward movement of Marxism-Leninist as it develops, along with the state on its long march toward the establishment of a communist society in China. To that end, the era of Reform and Opening Up was a way

³⁹ Xi Speech, *supra*, n. 1.

⁴⁰ Xi Speech, *supra*, n. 1.

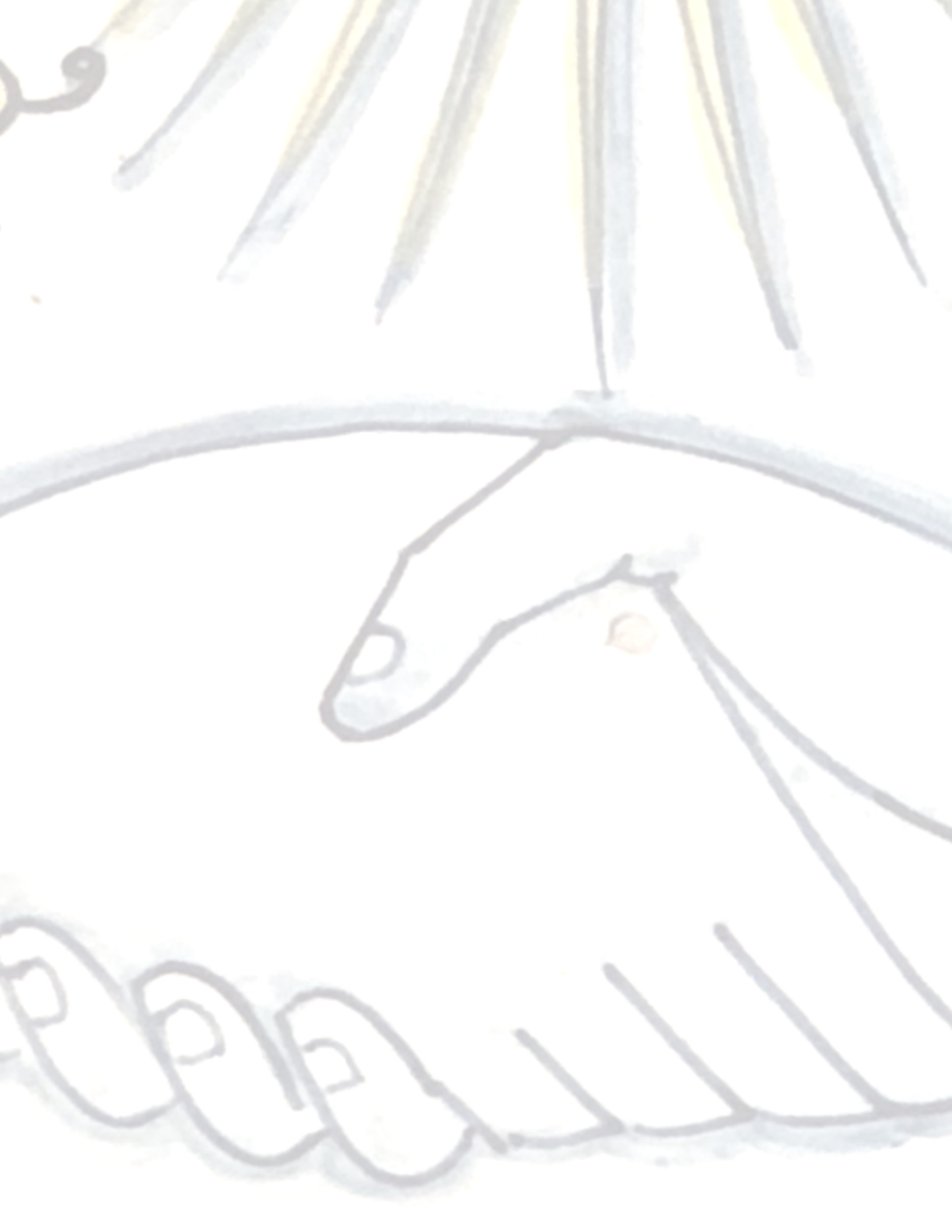
⁴¹ *Ibid.*

station. By implication, so will be the New Era theory, and the contemporary stage of Chinese history.

5. Conclusion

Where does that leave us? First, it complicates and destabilizes the meaning of reform and opening up. It naturalizes the process as inherent in Chinese culture. But at the same time, it necessarily contains its specific manifestation within the history of the CPC as a stage in the historical development of its own leadership that must give way to new theoretical forms of reform and opening up, along with changed pragmatic application. Second, it moves the principal objective of the CPC's work as moving from an economic to a moral-cultural project. That is already producing substantial consequences, starting with Social Credit Initiatives and proceedings through the structures of discipline and supervision. Third, it reverses the direction of reform and opening up. This is a critical departure from the Founding Era and that of Reform and Opening Up. China is now poised to become a net exporter of capacity and theory, rather than an importer of advanced thinking. That changes the fundamental calculus of China in the world, but also of the elements of Leninist theory with Chinese characteristics. Fourth, it suggests the increasingly central role of internationalism in the domestic construction of Chinese Leninist theory. Fifth, New Era thinking returns politics to the center of the work of the CPC. But that centering will have substantial effects on conceptualizations of the market, of rule of law, and of the relative roles of state and Party in the management of China. Sixth and last, the New Era returns Marx to the CPC.

While the focus of the CPC's working style necessarily puts Leninism at the core; that core is empty without the normative guidance of a set of basic normative operational premises. It was not clear what those baselines premises were toward the end of the Era of Reform and Opening Up other than the imperative of development of productive forces. It appears to be clear now. The ramifications will not likely be felt in full for a number of years.



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