Chinese Legal Development Assistance: Which Rule of Law? Whose Pragmatism?

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ABSTRACT

China is both a recipient and a donor of foreign development aid. As a donor state, China insists that it does not interfere in the internal affairs of foreign states, and it criticizes Western human rights conditionality and rule of law advocacy in development cooperation. Due to this non-interventionist posture, Chinese foreign development aid is commonly seen to exclude politically sensitive assistance for governance institutions and the legal sector in particular. This Article demonstrates that Chinese foreign development aid does, in fact, include a legal component. Chinese legal development assistance comprises advice on law reform in developing countries; capacity-building programs for lawyers from developing countries; and regulatory compliance support for Chinese companies operating in developing countries. Through this aid, China does not advocate a specifically Chinese version of the rule of law. This is not only an ideological choice but also a commercially motivated decision: China’s interests as an investor are supported by Western-style legal institutions. More fundamentally, China’s idiosyncratic legal governance model cannot be easily exported to foreign countries because of its reliance on repressed, largely informal knowledge about the desired relationship between the Communist Party and the legal system.

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I. INTRODUCTION

China is both a recipient and a donor of foreign development aid. As a donor state, China primarily seeks to support commercially viable infrastructural projects in developing countries. China insists that it does not interfere in the internal affairs of foreign states, and
it criticizes Western human rights conditionality and rule of law advocacy in development cooperation. Due to this non-interventionist posture, Chinese foreign development aid is commonly seen to exclude politically sensitive assistance for governance reform. As regards governance assistance to the legal sector, in particular, China is seen as a recipient of foreign aid rather than as an exporter.\(^1\)

This Article demonstrates that Chinese foreign development aid (or “cooperation”) does, in fact, include a distinct legal component. Relying on scarce Chinese government sources and interviews of Chinese development experts and legal scholars, this Article describes the basic outlines of Chinese legal development assistance to developing countries.\(^2\) This Article shows that China provides

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1. According to the Organization for Economic Co-operation and Development (OECD), legal development projects undertaken by foreign donor states in China amounted to USD 15.7 million in 2015. OECD, ORG. FOR ECON. DEV., OEC

2. This Article refers to all law-related foreign development assistance either as “legal development assistance” or as “rule of law aid.” These two terms cover exactly the same scope of activities (such as assistance for law drafting, the court system, and the legal profession). However, there is a slight stylistic difference between these terms. For a Western reader, the term “rule-of-law aid” suggests a connection between Western-style “rule of law” and economic and social development. For this usage of the term, see Thomas Carothers, \textit{The Rule of Law Revival, in Promoting the Rule of Law Abroad, in Search of Knowledge} 6, 12–13 (Thomas Carothers ed., 2006). The term “legal development assistance,” in contrast, does not establish a semantic connection to Western conceptions of the rule of law. As a consequence, the term “legal development assistance” is better suited for describing China’s law-related development assistance than the more specific “rule-of-law aid.” The term “legal development assistance” has been used to describe Japan’s law-related development assistance. See Pip Nicholson & Teilee Kuong, \textit{Japanese Legal Assistance: An East Asian Model of Legal Assistance and Rule of Law?}, 6 HAGUE J. OF THE RULE OF L. 141, 149 (2015). To be sure, there are many other concepts that could be used to describe law-related foreign development assistance. For instance, “legal technical assistance” has been used to describe aid comprising: (i) technical assistance for the drafting of laws and regulations and technical advice for substantive law reforms, (ii) support for the court system and the legal profession, and (iii) assistance for the development of legal information systems. Scott Newton, \textit{Law and Development, Law and Economics and the Fate of Legal Technical Assistance, in Lawmaking for Development:}
(i) advice on law reform in developing countries; (ii) capacity-building programs for lawyers from developing countries; and (iii) regulatory compliance support for Chinese state-owned enterprises and private companies operating in developing countries. Chinese legal development assistance is a particularly visible part of China’s ambitious foreign policy project, the “Belt and Road Initiative,” but it predates this initiative and extends to countries that do not participate in it.\(^3\)

To be sure, Chinese legal development assistance is marginal compared to the rule-of-law projects undertaken by international development organizations and large Western donor states. Nevertheless, the resources spent on Chinese legal development assistance seem comparable to rule-of-law aid from small European donor states.\(^4\) China is particularly active in offering legal capacity-building programs. Each year, the Chinese government provides training courses and legal conferences to hundreds of foreign lawyers.\(^5\) From a historical perspective, some aspects of Chinese legal development assistance are comparable to the first flourishing of the Law and Development movement in the United States in the 1960s and 1970s.\(^6\)

Although Chinese legal development assistance is small-scale, even tentative efforts to export legal knowledge from China raise far-reaching questions about the role of law in development assistance. Why is China, a critic of Western human rights and rule of law advocacy, setting up its own projects on legal development assistance? Contemporary Western development policies stress the instrumental and intrinsic importance of the rule of law for social and economic development. Does China accept Western assumptions about the rule of law in its development cooperation? Or does it...
advocate a specifically “Chinese” approach to the relationship between law and development, a possible alternative to the Western “rule-of-law orthodoxy”? Does such an approach constitute part of a new Chinese development model, which China’s President Xi Jinping now offers to “countries and nations who want to speed up their development” Chinese legal development assistance also influences development policymaking in the United States and other Western donor states. Western donors now face competition from China, not only for economic development projects, but in legal development assistance, too.

Many scholars and development experts are interested in the idiosyncratic legal underpinnings of the Chinese development experience. The ongoing backlash against globalization has called into question the legal architecture of international trade and domestic laws, which facilitate neoliberal economic policies. In contrast to the “Washington Consensus,” the Chinese development model is recognized for its protectionist measures and heavy state justice, such as property rights and civil and political rights. See infra note 259. For the distinction between formal and substantive rule of law conceptions, see Brian Z. Tamanaha, On the Rule of Law: History, Politics, Theory 19 (2004). For the definitions of the rule of law in the World Bank’s practice, see Alvaro Santos, The World Bank’s Uses of the “Rule of Law” Promise in Economic Development, in The New Law and Economic Development: A Critical Appraisal 253, 266 (David M. Trubek & Alvaro Santos eds., 2006). For the Chinese rule of law model advocated by the Chinese Communist Party (CCP), see infra Part IV.A. For a conceptual framework of various Chinese rule of law models, see Randall Peerenboom, China’s Long March Toward Rule of Law 103–09 (2002). I have discussed Chinese rule of law conceptions in Samuli Seppanen, Ideological Conflict and the Rule of Law in Contemporary China: Useful Paradoxes (2016).

According to Frank Upham, the Western rule of law orthodoxy holds that the rule of law, defined as formal legality, is necessary for economic growth. See Frank Upham, Mythmaking in the Rule of Law Orthodoxy 7 (Carnegie Endowment Rule of Law Series, Democracy and the Rule of Law Project Working Paper No. 30, 2002), Justifying this orthodoxy are deep-rooted conceptions about the relationship between law and society. See David M. Trubek & Marc Galanter, Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States, 1974 Wis. L. Rev. 1062, 1073–74.


intervention, as well as for its ambivalent approach to the rule of law.

The Chinese approach to development has also been described as self-consciously “pragmatic.” Beijing is seen to promote incremental, context-specific solutions, which are not derived from a uniform and universally applied policy framework. The notion of pragmatism is tied to the Chinese government’s tolerance for legally ambiguous practices, as well as to its anti-formalist approach to law.

The association between the seemingly successful Chinese development model and the anti-formalist approach to law fits the perception that heterogeneous ideas about law are replacing the formalist preferences of the Washington Consensus. Development experts have long argued that the commonsensical assumptions about the beneficial nature of rule of law aid are elusive and ill justified. Some development organizations, most notably the World
Bank, now extol the virtues of pragmatism and localism in the design of legal reforms.19

While such economic and political considerations might induce the Chinese government to start promoting a pragmatic and ambivalent approach to law in foreign countries, China is also one of the largest investors in the world. As a consequence, China benefits from the investor-friendly laws and international trade agreements previously advocated under the Washington Consensus.20 Indeed, as the United States has adopted a revisionist approach to globalization, the Chinese leadership is positioning itself as the principal advocate of trade liberalization.21 In light of China’s foreign commercial interests, economic protectionism, heavy state intervention, and anti-formalism no longer appear as self-evidently positive development policies for the Chinese government—although China continues to rely on these policies domestically. The question is whether the Chinese government can reconcile its newly assumed global role with its long-standing objections to Western rule-of-law promotion and its ambiguous commitment to legal formalism at home and abroad.22

The first step in answering this question is to establish some elementary facts about the scale and nature of China’s legal development assistance. In many other jurisdictions, this would be a straightforward task. In China, gathering even basic information about foreign development assistance presents a formidable challenge.23 Information about Chinese foreign development assistance is considered a state secret.24 Not even the highest legislative organ in China, the National People’s Congress, appears to

22. For China’s objections toward Western rule of law promotion, see Jing Gu & Anthony Carty, China and African Development: Partnership not Mentoring, 45 IDS BULLETIN SPECIAL ISSUE: CHINA AND INTERNATIONAL DEVELOPMENT 57, 60 (2014); for the Chinese government’s ambivalent approach to legal formalism, see PEERENBOOM, supra note 8, at 218–219.
23. Establishing empirical facts is a common problem in Chinese studies. The economist Yasheng Huang illustrates this problem as follows: “In studies of American economy, scholars may debate about the effects of, say, ‘Reagan tax cuts.’ In studies of the Chinese economy, the more relevant question would be, Did the government cut taxes in the first place?” YASHENG HUANG, CAPITALISM WITH CHINESE CHARACTERISTICS: ENTREPRENEURSHIP AND THE STATE xi (2008).
24. See BRAUTIGAM, supra note 1, at 12.
be able to obtain detailed information about development spending from the Chinese government.\(^{25}\) When the Chinese government releases information about its foreign development assistance, it most likely underreports its development projects abroad.\(^{26}\)

The Chinese government has released some information about its development programs—most notably, two white papers on China’s foreign aid in 2011 and 2014—but these documents are cursory and mostly silent on legal development assistance.\(^{27}\) Legal development assistance is a particularly sensitive topic for the Chinese government, which has long insisted that Chinese development assistance is non-ideological.\(^{28}\) Academic scholarship on Chinese legal development assistance is scarce both in China and abroad,\(^{29}\) and Chinese government officials are generally unwilling to discuss the details of Chinese development programs with a foreign researcher.\(^{30}\)

Still, some information can be found on China’s legal development assistance programs. This Article benefits from discussions with ten Chinese individuals who are involved with Chinese development assistance as development experts or as scholars.\(^{31}\) It is also possible to talk to foreign participants in Chinese legal capacity-building programs (provided that one is able to identify such individuals). This Article makes use of information and course materials obtained from three foreign participants in Chinese legal

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28. Li Anshan, China and Africa: Policy and Challenges, 3 China Sec. 69, 74 (2007).

29. There are a few English language studies explicitly addressing the role of law in Chinese development policy. See Yonghong Hong, Trade, Investment and Legal Cooperation between China and Africa, in CHINESE AND AFRICAN PERSPECTIVES ON CHINA IN AFRICA 85 (Axel Harneit-Sievers et al. eds., 2010); Salvatore Mancuso, China in Africa and the Law, 18 ANN. SURV. INT’L & COMP. L. 243 (2012). Chinese legal scholars have begun to discuss legal development assistance in the context of the Belt and Road Initiative. See Lu Nan, supra note 6, and infra note 147.


31. The interviews took place in Beijing and Hong Kong between June, 2016 and June, 2017. The interviewees were promised anonymity due to the sensitive subject area of this Article. To the extent possible, this Article cites written sources for information and views on Chinese foreign legal development assistance.
training courses. Finally, Chinese government agencies and newspapers have released some information about Chinese development programs. This information is useful for piecing together and corroborating information received from Chinese development experts and foreign lawyers. Working papers published by the International Poverty Reduction Center in China (IPRCC), a research center established by the Chinese government to share Chinese development experience with developing countries, are particularly helpful for illustrating Chinese development experts’ (often implicit) attitudes toward law.

On the basis of this no doubt incomplete information, it is possible to form a general image of the aims and impediments of Chinese legal development assistance. Part I of this Article demonstrates that legal development assistance is marginal in the overall context of Chinese foreign development assistance. In contrast to Western development aid, Chinese foreign development assistance focuses on infrastructure projects and is often commercially motivated.

Part II describes the marginal role of law in Chinese foreign development assistance in more detail. This Part demonstrates that law is not only marginal in the Chinese government’s foreign development assistance programs, but that the Chinese government and companies tolerate and even thrive in legally ambiguous environments. Yet, owing to China’s role as an investor, the Chinese government is increasingly vocal about advocating formal legal protections in developing countries.

Part III describes the modalities of Chinese legal development assistance. This Part accounts for the few publicly available instances of Chinese support for law reform in developing countries. It also describes Chinese legal capacity-building programs, which are currently the most significant form of Chinese legal development assistance. Finally, this Part describes regulatory compliance support

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32. The materials are from the First China-Africa Legal Professionals Exchange Project, Sept. 1–Sept. 30, 2014, and the Third China-Africa Legal Professionals Exchange Project, May 29–Jun. 11, 2016. The three interviewees were promised anonymity. Obviously, this sample size is too small to draw conclusions about the effects of Chinese legal training courses. Such conclusions must be left for future studies.


34. Tellingly, Chinese development assistance is administered by the Chinese Ministry of Commerce (MOFCOM) rather than by the Chinese Ministry for Foreign Affairs or by a specialized development cooperation ministry. WOLF, XIAO & WARNER, supra note 1, at 12; 2011 White Paper, supra note 27.
provided by the Chinese government for Chinese companies operating abroad.

Part IV asks whether Chinese legal development assistance poses an ideological challenge to Western rule-of-law aid. This Part argues that, while the Chinese legal development assistance presents a potentially disruptive influence to Western rule-of-law aid, the interests of the Chinese government and the ideological predilections of Chinese development experts are too diverse to constitute a coherent ideological challenge against the (as such elusive) Western notions of the rule of law.\(^{35}\) Chinese foreign development assistance seems to promote no coherent Chinese rule of law model—or any other approach to the relationship between law and development.

This conclusion is in line with the accounts of the purposefully non-ideological nature of Chinese foreign policy and the “Beijing Consensus,” which is typically described as pragmatic experimentalism.\(^{36}\) The Chinese development model consists of the pragmatic assumption that there are no exportable development models. However, the absence of a clearly articulated Chinese rule-of-law model is not only a political choice but also a function of China’s idiosyncratic state structure and the central role of the Communist Party in the Chinese legal system. Ultimately, the Communist Party’s legal governance model cannot be easily exported to foreign countries because of its reliance on repressed, largely informal knowledge about the desired relationship between the Communist Party and the legal system.

Nevertheless, some argumentative strategies in Chinese development cooperation are effective in legitimizing Chinese developmental and commercial activities abroad. Perhaps counterintuitively, the Chinese development experts’ practice of acknowledging the self-interested nature of Chinese development assistance is well received among the elites in developing countries. Moreover, in conjunction with China’s considerable economic success and the large scale of Chinese entrepreneurial projects in developing countries, the marginal and tentative nature of Chinese legal development assistance programs teaches a lesson about the relative unimportance of law for economic development.

\(^{35}\) This is not to imply that Western development policies are coherent—they are not. See, e.g., Santos, supra note 8, at 275–76; see also Samuli Seppänen, From Substance to Absence: Argumentative Strategies in the Implementation of the Human Rights-Based Approaches to Development, 49 N.Y.U. J. Int’l. L. & Pol. 389, 429 (2017) (criticizing the incoherence of Western policy frameworks on the human rights-based approach).

\(^{36}\) See Brautigam, supra note 1, at 308; Dowdle & Prado, supra note 15, at 39; RAMO, supra note 15 at 4.
II. CHINESE FOREIGN DEVELOPMENT ASSISTANCE: AN OVERVIEW

As the starting point of this Article, it is helpful to compare the scale and nature of China’s overall foreign development assistance with Western foreign development aid. A key distinguishing feature in this comparison concerns support to governance institutions, including the legal sector. The nature of Chinese foreign development assistance makes support to the legal sector appear less essential to the Chinese government than to Western donor states.

A. Small Donor, Large Development Financier

For the uninitiated, the large scale of Chinese foreign development assistance may seem surprising. International development finance provided by Chinese development banks is roughly comparable to the total lending of the most important Western-based lending institutions. Moreover, far from being a recent pursuit, China’s interest in foreign development assistance predates its rise to (moderate) economic prosperity. Even by Western standards, China was an early participant in international development cooperation. The roots of Chinese foreign aid can be traced back to the ancient tributary system, and the influence of Chinese law in East Asia has a long history. In the modern sense, Chinese foreign aid started in the mid-1950s. Estimates about the volume of Chinese aid during the Cold War vary, but most estimates put the total figure in the billions of US dollars. The volume of China’s aid during the Cold War was less than development aid from the United States and the Soviet Union, but it was, nonetheless,

37. See infra note 61 and accompanying text.
39. See Brautigam, supra note 1, at 234.
41. See Wolfgang Bartke, China’s Economic Aid 16 (1975).
remarkably high given China’s economic condition at the time. China supported agricultural projects in Africa as millions of its own citizens perished of famine at home. In the 1960s and 1970s, China even provided development aid to two European countries, Albania and Malta. Until China’s economic reforms took off in the 1980s, two-thirds of China’s aid recipients had higher per capita incomes than China.

Chinese foreign development assistance remains large for a developing country. The precise scale of this assistance is difficult to establish since China does not adhere to the same reporting standards on foreign development assistance as Western countries, set by the Development Assistance Committee (DAC) of the OECD. Nevertheless, according to an OECD estimate, China’s concessional development aid reached USD 3.4 billion in 2014. This is a fraction of development aid donated by the three largest donor states: the United States, the United Kingdom, and Germany. China’s concessional development aid is also significantly less than the

43. BARTKE, supra note 41, at 20.
44. BRAUTIGAM, supra note 1, at 33.
45. BARTKE, supra note 41, at 79, 134.
46. COPPER, supra note 42, at 14.
47. Western donor states—most notably, the United States, the United Kingdom and Germany—are members of the OECD DAC. DAC measures foreign development assistance through the concept of Official Development Assistance (ODA), which provides a set of criteria to determine whether foreign development assistance is sufficiently concessional to qualify as ODA. DAC defines ODA as “transfers of resources” or “flows” to countries and multilateral institutions that are “provided by official agencies, including state and local governments, or by their executive agencies; and . . . each transaction of which: a) is administered with the promotion of the economic development and welfare of developing countries as its main objective; and b) is concessional in character and conveys a grant element of at least 25 per cent (calculated at a rate of discount of 10 per cent). The discount rate is a “notional reference rate of 10 per cent per annum.” While commercial interest rates are generally below ten percent, the OECD states that the required amount, 25% of the loans, “must still be concessional in character, i.e. below market interest rates” in order to qualify as ODA. OECD, Is It ODA? Factsheet—November 2008 1, 3 (2008) [hereinafter OECD ODA]. China is not a member of the OECD and, unlike some countries, it does not report its development assistance statistics using DAC criteria. According to Deborah Brautigam, China calculates military assistances and certain joint venture investments as foreign development assistance. These expenditures would not constitute ODA according to the DAC rules. However, Chinese external assistance budget excludes scholarships offered for foreign students studying in China. These would be ODA under the DAC rules. See Deborah Brautigam, Aid With Chinese Characteristics: Chinese Foreign Aid and Development Finance Meet the OECD-DAC Aid Regime, 23 J. INT’L DEV. 752, 756 (2011).
49. The largest individual donor, the United States, donated USD 31.1 billion as ODA in 2015. Id. at 275. The United Kingdom, the second largest individual donor, donated USD 18.7 billion in the same year, and Germany, the third largest donor state, USD 17.8 billion. Id. at 199, 271.
development aid donated by Canada and Sweden.\textsuperscript{50} It is, however, roughly equal to development aid from Australia,\textsuperscript{51} and more than what Belgium, Denmark, and Finland each donated.\textsuperscript{52} As for other developing countries, the OECD estimates that China’s concessional aid is multiple times larger than the development aid from Brazil,\textsuperscript{53} Chile,\textsuperscript{54} and India.\textsuperscript{55}

China’s concessional aid program does not, in other words, strike as particularly large in comparison to Western countries. Although China has donated highly visible pieces of infrastructure to developing countries, such as sports stadiums and hospitals, it does not provide sustained support on the scale of large Western donor states.\textsuperscript{56} The impact of Chinese concessional development aid is further reduced by its more or less even allocation among China’s development partners.\textsuperscript{57} Moreover, China’s aid infrastructure is rudimentary. There is no specialized Chinese development agency, and the Chinese embassy staff members charged with the management of development projects are generally not experts in development cooperation.\textsuperscript{58}

Nevertheless, comparisons between OECD-compatible development aid from different countries belie the true scale of Chinese foreign development assistance. Whereas the OECD criteria emphasize the concessional nature of development assistance—that is, they only take into account gifts and low interest rate loans—much of Chinese foreign assistance takes place within the broader intersection of foreign aid, commercial enterprise, and international politics. Development finance offered by Chinese export banks, most notably the China Development Bank (CDB) and the Export-Import Bank of China (ExIm Bank), is a key element of this assistance. Some

\begin{itemize}
  \item \textsuperscript{50} Canada’s ODA amounted to USD 4.3 billion in 2015. \textit{Id.} at 175. Sweden’s ODA reached USD 7.1 billion in the same year. \textit{Id.} at 263.
  \item \textsuperscript{51} The amount of Australian ODA was USD 3.2 billion in 2015. \textit{Id.} at 163.
  \item \textsuperscript{52} Belgian ODA amounted to USD 1.9 billion in 2015. \textit{Id.} at 171. Denmark donated USD 2.6 billion as ODA in the same year and Finland USD 1.3 billion. \textit{Id.} at 183, 191.
  \item \textsuperscript{53} The most recent OECD estimate for ODA from Brazil, USD 500 million, is from 2010. \textit{Id.} at 293.
  \item \textsuperscript{54} This amount was USD 49 million in 2014. \textit{Id.} at 294.
  \item \textsuperscript{55} This amount was USD 1.4 billion in 2014. \textit{Id.} at 298. Relative to the size of its economy, however, China donates less than India. In 2014 (and in 2015), the Gross Domestic Product (GDP) of China, USD 11 trillion, was more than five times that of India (USD 2 trillion), whereas concessional development aid from China was only about twice that from India in 2014. \textit{Id.} at 296, 298; \textsc{International Monetary Fund [IMF]}, \textit{World Economic Outlook Database}, \url{https://www.imf.org/external/pubs/ft/weo/2016/02/weodata/index.aspx} [\url{https://perma.cc/PSP8-24PV}] (archived Oct. 23, 2017).
  \item \textsuperscript{56} \textsc{Brautigam}, \textit{supra} note 1, at 73, 118.
  \item \textsuperscript{57} OECD, \textit{DEVELOPMENT COOPERATION REPORT 2016}, \textit{supra} note 48, at 303.
  \item \textsuperscript{58} \textsc{Brautigam}, \textit{supra} note 1, at 109; see also \textsc{King}, \textit{supra} note 1, at 152.
\end{itemize}
projects financed by the Chinese development banks are entirely commercial, whereas others include concessional elements, such as zero-interest loans and export buyer’s credit. Concessional loans can be secured against, for instance, income from the exportation of natural resources.

While the terms of Chinese development finance are not entirely comparable with the loan terms of international development banks, it is estimated that CDB has overtaken the World Bank as a global development financier. Together with ExIm Bank, the combined assets of the two Chinese development banks are just behind the combined assets of the World Bank, Asian Development Bank, InterAmerican Development Bank, European Investment Bank, European Bank for Reconstruction and Development, and African Development Bank.

B. Turn-Key Projects instead of Support for Governance Institutions

The nature of Chinese development finance amplifies its effects. Chinese development banks typically fund complete “turn-key” projects, such as factories, mines, farms, ports, and roads. In these projects, the Chinese side takes an active role in designing and constructing the pieces of infrastructure, typically sending engineers and technical personnel to the project site. Once the project is complete, the Chinese government hands over the entire piece of infrastructure to the recipient country.

According to the 2011 White Paper, such turn-key projects are the principal modality of Chinese development aid, accounting for 40 percent of Chinese foreign aid expenditure. The Chinese government offers these projects as package deals, in which the Chinese side provides financing and technical expertise to the developing country and receives raw materials, such as oil and aluminum, in return. Many of these projects are initiated by Chinese state-owned or private enterprises, which look for new

60. BRAUTIGAM, supra note 1, at 176–177.
63. Id.
markets in developing countries or seek government-financed infrastructural projects to support their foreign business operations.

Despite such commercial motives, Chinese development finance is very attractive for governments in developing countries, especially since such assistance is generally not available from Western donor states. Instead of agricultural and industrial turn-key projects, Western donor states nowadays prefer to focus on supporting social and administrative infrastructure, such as education, health, water and sanitation, government institutions (including the legal sector), and economic infrastructure (such as transportation and telecommunication). Support for social, administrative, and economic infrastructure comprises about one-third of OECD DAC members’ development expenditure. Chinese-style support for production—including support to agriculture, industry, mining, and construction—accounts only for 7 percent of DAC members’ development spending.

It is also noteworthy that some Western development aid is tied to specific conditions. Some of these conditions relate to political reforms, such as democratic reforms and the improvement of a country’s human rights conditions; other conditions concern economic reforms and benchmarks, setting, for instance, a maximum level for government borrowing or requiring the elimination of price controls. The Chinese government is adamant that it does not impose political or economic conditions on aid recipients.

66. Shen, supra note 26, at 23, 27.
67. This figure refers to ODA flows. OECD, DEVELOPMENT COOPERATION REPORT 2015 317 (2015). These figures are not available in the most recent OECD Development Cooperation Report. See generally OECD, DEVELOPMENT COOPERATION REPORT 2016, supra note 48.
68. This figure refers to ODA flows. OECD, DEVELOPMENT COOPERATION REPORT 2015, supra note 67, at 317.
69. A more benign term for the conditions is “accountability mechanisms.” Id. at 68.
72. See 2011 White Paper, supra note 27; see also Webster, supra note 1, at 651.
But Chinese loans do come with some strings attached. Most obviously, the People’s Republic of China does not offer foreign assistance to countries that fail to recognize the Beijing government (as opposed to the government in Taiwan) as the legitimate government of China under the “One China policy.” The Chinese government also requires that recipients of Chinese aid obtain much of the requisite goods and services from Chinese companies (which may, however, subcontract local companies for this end). Finally, as discussed in Part II.A below, some Chinese development projects have been conditioned on legislative amendments.

To be sure, there is much criticism of the Chinese approach to foreign development assistance. China’s development assistance is thought to be motivated by a non-altruistic strategy to secure natural resources. Drawing on a database of Chinese-financed projects, a World Bank study noted in 2009 that “[m]ost Chinese government funded projects in Sub-Saharan Africa are ultimately aimed at securing a flow of Sub-Saharan Africa’s natural resources for export to China.” This strategy is not uniquely Chinese, and it is unclear to what extent Chinese development assistance is driven by a motive to secure resources. Nevertheless, there is an unmistakable geopolitical element to Chinese development assistance policy. The most ambitious recent Chinese foreign policy strategy, the Belt and Road Initiative, is explicitly promoted as a strategy to establish a Chinese sphere of influence in Eurasia. The self-interested,
commercial nature of Chinese legal development assistance does not seem to diminish its value for the Chinese development experts. On the contrary, they perceive the mutually beneficial nature of such aid as its central justification. Still, Chinese development assistance and finance undoubtedly responds to a demand for agricultural and industrial turn-key projects. Moreover, Chinese development aid is not confined to infrastructural projects alone. As with many other donor states, China offers both short-term training programs for government officials and vocational personnel and long-term educational opportunities in masters’ programs and PhD programs. Short-term training programs organized by China are among the largest in the world; in Africa alone, China plans to train forty thousand people between 2016 and 2018. In addition to bringing officials and other personnel to China, the Chinese government trains vocational and technical personnel in their home countries. China operates vocational training centers in Africa, providing training on construction skills, engineering, architecture, electronics, and other skills. This training is large scale: from 2016 to 2018, China plans to train two hundred thousand vocational and technical personnel in


81. Bautigam, supra note 1, at 98–99; see also Haroz, supra note 1, at 68.

82. Bautigam, supra note 1, at 277, 284, 292; Wolf, Xiao & Warner, supra note 1, at 49. It is, however, worth bearing in mind that Western countries provide aid to regimes that they consider violators of human rights (such as Ethiopia). Bautigam notes that Western countries and Eastern European countries have provided weapons for countries such as Saudi Arabia and Zimbabwe. See Bautigam, supra note 1, at 290–91.


86. Bautigam, supra note 1, at 158.
Africa. In universities, Confucius Institutes are a particularly visible part of China’s capacity-building programs. These institutes provide language courses and facilitate student exchanges to China.

Finally, it should be noted that Chinese and Western development assistance policies are becoming increasingly similar. China joined OECD members in their most recent comprehensive declaration on the principles of development cooperation, the 2011 Busan Partnership for Effective Development Co-operation. Occasionally, China has partnered with Western development organizations in the design of development policies. Moreover, China persuaded fifty-six countries (excluding the United States but including most Western European countries and Australia) to join the Asian Infrastructure Investment Bank (AIIB), a development institution meant to rival the US-based World Bank. AIIB has paid some attention to the social and environmental aspects of development projects.

In certain ways, Western donor states also are adopting some aspects of Chinese development policies. Western donor states and international organizations are relaxing political and economic conditions, and they have begun to emphasize the ability of developing countries to choose their own development models, even with regard to their legal institutions.

87. JOHANNESBURG ACTION PLAN, supra note 85. The efficiency of these trainings is questionable. Brautigam notes that the short-term training courses, which form the vast majority of Chinese training programs, “are not linked to specific projects and will do little to build capacity.” BRAUTIGAM, supra note 1, at 158.

88. KING, supra note 1, at 54–56.

89. The Busan Partnership for Effective Development Co-operation Declaration comprises four principles: (i) the ownership of development priorities by developing countries; (ii) a focus on results; (iii) the establishment of development partnerships; and (iv) transparency and shared responsibility. China endorsed the principle in the context of “South-South cooperation.” See OECD, DEVELOPMENT COOPERATION REPORT 2015, supra note 67, at 338.


92. See infra text accompanying note 105.

93. According to the Busan Partnership for Effective Development Co-operation Declaration, “[c]ountries should define the development model that they want to implement.” OECD, DEVELOPMENT COOPERATION REPORT 2015, supra note 67, at 338.

94. See infra text accompanying notes 270–275.
III. THE ROLE OF LAW IN CHINESE FOREIGN DEVELOPMENT ASSISTANCE

A. Qualified Resistance to Transnational Human Rights and Rule of Law Standards

Because of its commercially motivated, project-based nature, Chinese development assistance does not focus on governance reform, which is one of the principal preoccupations of Western development agencies. Important goals of Western development aid—the strengthening of the rule of law and the improvement of human rights conditions in developing countries—are largely absent from Chinese development policy statements. The two Chinese white papers on development assistance do not mention the “rule of law” or “human rights” at all.95 The marginality of law for Chinese development policies is reflected in the regulation of Chinese foreign development assistance—or rather, the lack of such regulation. In contrast to many Western countries, there is no specific legislation on development assistance in China.96

As far as law is mentioned in Chinese development policy texts, it is usually in the context of sovereign equality and the argument that all states have the right to choose their own development model.97 References to law also appear as criticism of Western-imposed human rights conditionality. The 2009 Beijing Declaration of the Forum on China-Africa Cooperation (FOCAC), for instance, condemns the “politicalization of human rights and the imposition of human rights conditionality on economic assistance.”98 These complaints are part of China’s long-standing objections toward transnational governance standards allegedly imposed by Western countries. As Jing Gu and Anthony Carty have pointed out, transnational governance standards on the rule of law contradict the horizontal nature of the Chinese ideal of international relations, according to which “[n]o one stands in a position of authority over the other.”99


96. ZHANG, GU & CHEN, supra note 1, at 15.


At the same time, the Chinese government maintains that it is not opposed to the concepts of “the rule of law” and “human rights” as such. The Chinese government sometimes resorts to universalist human rights language. The abovementioned 2009 Beijing Declaration, for instance, describes human rights conditions on development aid as “a violation of human rights.”100 Occasionally, the Chinese government has also accepted, at least rhetorically, that there exist international standards on the rule of law.101 In practical terms, the Chinese government supports transnational governance standards agreed within bilateral and multilateral frameworks, such as the World Trade Organization.102 Some Chinese government entities nowadays view illegal conduct of Chinese companies negatively.103 Even human rights promotion in developing countries no longer appears as an unmitigated problem for the Chinese government. AIIB, the Chinese-run development bank,104 explains that the bank’s “operations seek to be supportive of these human rights and encourage respect for them.”105

The Chinese government has also advocated legislative reforms in developing countries in order to protect Chinese investments abroad. In Africa, the Chinese government calls for “a steady and reliable legal framework between China and Africa,” and it wishes to increase legal cooperation with its African partners.106 In Eurasia, one of the aims of the Chinese government is to “push forward

100. 2009 Beijing Declaration, supra note 98.
102. See NDRC, supra note 80.
negotiations on bilateral investment protection agreements,” which are intended to “protect the lawful rights and interests of investors.”\textsuperscript{107}

Still, the Chinese government stresses the politically noninvasive nature of its development assistance. Wen Jiabao, the former Chinese premier, explained the Chinese approach in 2006 as follows:

China supports the development of democracy and rule of law in Africa. But we never impose our own will on others. We believe that people in every region and country have the right and ability to properly handle their own affairs.\textsuperscript{108}

The non-interventionist approach was enshrined in the earliest explanation of Chinese development policy, the Eight Principles for Economic Aid and Technical Assistance to Other Countries in 1964.\textsuperscript{109} According to the Eight Principles, China will not attach any conditions to its aid or require any privileges for itself, nor will experts dispatched by China to developing countries enjoy a higher standard of living than the local experts.\textsuperscript{110} Keeping in line with the Eight Principles, the two White Papers issued by the Chinese government in 2011 and 2014 explain the motivation for China’s development activities in terms of friendly relations and cooperation with other developing countries.\textsuperscript{111}

Such assurances seem to reflect some aspects of Chinese development assistance accurately.\textsuperscript{112} However, it is also true that Beijing rewards developing countries for supporting its diplomatic positions. In addition to the above-described “One China” policy,\textsuperscript{113}

\begin{thebibliography}{99}
\bibitem{107} NDRC, supra note 80.
\bibitem{110} Id. The Eight Principles for Economic Aid and Technical Assistance to Other Countries comprise: (i) the principle of equality and mutual benefit; (ii) the unconditionality of aid; (iii) the provision of interest-free or low-interest loans; (iv) the self-reliance of aid recipients; (v) a focus on projects that require little investments and yield fast results; (vi) the provision of highest quality materials from China; (vii) the full transfer of Chinese technical expertise; and (viii) the pledge that the Chinese experts would enjoy no higher standard of living than the local experts. Id.
\bibitem{111} See 2011 White Paper, supra note 27; 2014 White Paper, supra note 27.
\bibitem{112} According to Deborah Brautigam, her African interviewees asserted to her that the Chinese government made no effort to convince them to adopt Chinese development models. BRAUTIGAM, supra note 1, at 38.
\bibitem{113} See supra text accompanying note 78.
\end{thebibliography}
the Chinese government has used development aid to reward governments in its territorial disputes in the South China Sea.\(^{114}\) Moreover, the Chinese government is not above imposing legislative requirements on developing countries in specific projects. This was the case with a mining and infrastructure agreement between the Democratic Republic of the Congo (DRC) and a group of Chinese state-owned companies.\(^{115}\) The agreement between the DRC and the Chinese companies included a requirement for the DRC to adopt legislation that gave the Chinese companies the benefits of all existing DRC regulations and the freedom to transfer funds abroad free of charges and transfer controls.\(^{116}\) When the DRC Parliament failed to adopt the requested legislation, the Chinese ExIm Bank financing the project withdrew from the deal. The withdrawal prompted a new round of negotiations between the Congolese and the Chinese. The DRC Parliament finally adopted the requested legislation and ExIm Bank reinstated its financing.\(^{117}\)

**B. Stage-based Narrative of Development**

Since Chinese development policy statements and white papers do not address law beyond references to (laudable) sovereign equality and (regrettable) human rights conditionality, there exist no official explanations for why law plays such a marginal role in Chinese foreign development policy. Surveys of Chinese development policy by Chinese scholars generally ignore this issue, at most drawing a contrast between unconditional Chinese development aid and the human rights conditions of Western development aid.\(^{118}\)

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118. See ZHANG, GU & CHEN, *supra* note 1, at 10–11 (noting that Chinese development policies diverge from Western development policies with regard to human rights, democracy and good governance); Li Anshan, *supra* note 28, at 83 (describing Western human rights-centered criticism of Chinese development policies). *But see* Lu
The assumptions about law in Chinese development policy are, thus, mostly implicit, and they must be inferred from the overall context of Chinese development policy. It seems that there are two main reasons for the marginality of law in Chinese foreign development assistance. First, it appears that Chinese policy makers and development practitioners conceptualize development as a stage-based process, in which (advanced) legal institutions become relevant only at the higher stages of development.

The origins of the stage-based conception (or “narrative”) of the development process can be traced back to early Western modernization theories. Under the stage-based model, some legal regulations—say, import tariff schedules—are presumed to be helpful for supporting the initial stages of economic development. However, liberal legal institutions—Western-style civil and political rights, for instance—become relevant only in the higher stages of economic development.

Under this model, adopting advanced institutions in the early stages of a country’s development process would not only be futile, as society is not able to make use of such institutions, but it could also

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Nan, supra note 6 (providing a comprehensive discussion on Chinese law and development discourse in the Belt and Road Initiative).


120. For the stage-based development approach in China, see Michael J. Sullivan, Developmentalism and China’s Human Rights Policy, in DEBATING HUMAN RIGHTS: CRITICAL ESSAYS FROM THE UNITED STATES AND ASIA 120 (Peter Van Ness ed., 1999).

121. One such modernization theory was put forth by the American development economist Walt Whitman Rostow in 1960. Rostow argued that economic growth occurred through a set of linear stages. In each stage, certain government institutions were thought to be necessary, while other government institutions were superfluous. The development process began with a period of economic take-off, when the urbanizing and industrializing economy started generating surplus, which could then be used as investments into agriculture and industry. See W.W. Rostow, THE STAGES OF GROWTH: A NON-COMMUNIST MANIFESTO 4–16 (1960). For the model’s influence on Western development policy, see Tor Krever, The Legal Turn in Late Development Theory: The Rule of Law and the World Bank’s Development Model, 52 HARV. INT’L L. J. 287, 295 (2011).

122. See Kennedy, The “Rule of Law,” supra note 119, at 103 (discussing the use of tariff schedules and other regulative measures in post-war development policy).

123. As Richard Posner notes, legal reform “is an important part of the modernization process of poor countries, but the focus of such reform should be on creating substantive and procedurally effective rules of contract and property rather than on creating a first-class judiciary or an extensive system of civil liberties.” Richard A. Posner, Creating a Legal Framework for Economic Development, 13 WORLD BANK RES. OBSERVER 1, 9 (1998).
be counterproductive for the development process. On the one hand, mature legal institutions, such as independent courts protecting individual rights, may obstruct profitable business practices and hinder the implementation of the government’s economic policies.\textsuperscript{124} As a Chinese manager of an economic zone in Zambia told a newspaper:

> The standard of the [Zambian] legal system is a little too ahead of its time. . . . Almost 50 percent of the people are unemployed and yet they still want to have so many housing allowances, education allowances and transportation allowances. Also, employees can’t be dismissed without good reason.\textsuperscript{125}

On the other hand, constructing too “advanced” legal institutions is seen as a drain on resources, which are needed for more important uses, such as the construction of surplus-generating infrastructure projects.\textsuperscript{126}

Chinese declarations on development cooperation routinely refer to the various “stages of development” in which its partner countries find themselves.\textsuperscript{127} The stage-based development model is also apparent in Chinese descriptions of its domestic development process.\textsuperscript{128} An IPRCC working paper outlining lessons “from China’s experience . . . for African countries,” explains that the sequencing of China’s reforms “may hold lessons for [other countries].”\textsuperscript{129} According to the working paper, China started with agricultural reforms, then

\textsuperscript{124} For the intellectual roots of this conception, see Kennedy, \textit{The “Rule of Law,” supra note 119, at 103–04 (explaining that the post-war development consensus viewed law as “legislation and the pronouncements of the legislature or executive, rather than customary law, contract or property law and the pronouncement of judges”) and pointing out that law, including its rights protections, were “understood to place few limits on development policy”) (emphasis in original).}


\textsuperscript{126} See id. (citing the above-mentioned Chinese manager, who contends that “in the early stages of development . . . equality gets sacrificed”); see also Donald C. Clarke, \textit{Economic Development and the Rights Hypothesis: The China Problem}, AM. J. COMP. L. 51 89, 110–11 (2003) (noting that the limited resources of a developing country would be “better used in creating an effective structure for the prevention of arbitrary confiscation . . . instead of for the creation of courts that could fairly adjudicate contract disputes”).

\textsuperscript{127} See, e.g., 2009 Beijing Declaration, \textit{supra} note 98.

\textsuperscript{128} The White Paper on the Rule of Law, for instance, states that the Chinese “legal framework shows certain characteristics of the current stage” of China’s development process. See The White Paper on the Rule of Law, Conclusion, \textit{supra} note 101.

moved on to labor-intensive manufacturing, and finally began to open its economy progressively to foreign competition and investment.\footnote{Id.}

The implication of this development narrative for prominent (moderately reformist) Chinese legal scholars is that China will adopt increasingly advanced, Western-style legal institutions as it becomes more “developed.” However, adopting such institutions in the present stage of China’s development process would be harmful.\footnote{Li Buyun, Lün Rengan [On Human Rights] 130 (2010); Ji Weidong, Xianzheng xin lun: Quanqiu hua shidai de fa yu shehui bianqian [New Constitutional Theory: Legal and Social Change in an Era of Globalization: Second Edition] 294 (2d ed., 2010); Xia Yong, Shizilukou hua fazhi [The Rule of Law at the Crossroads] Bianyuan sixiang 138, 142 (2008).}

This explanation neatly corresponds to Chinese justifications for its focus on economic, social, and cultural rights at the expense of civil and political rights.\footnote{See Information Office of the State Council, White Paper on Human Rights in China (1991), in The Chinese Human Rights Reader 355, 361 (Stephen C. Angle & Marina Svensson eds., 2001) (insisting on the primacy of the right to subsistence).}

At the same time, the stage-based narrative is contrary to the view that civil and political rights, impartial courts, and democratic processes are instrumentally necessary and intrinsically valuable at every phase of the development process.\footnote{See UNDP, Human Development Report 2000: Human Rights and Human Development 23–24 (2000); Amartya Sen, The Idea of Justice 342–345, 379–85 (2009); cf. World Bank, World Development Report 2017, supra note 7, at 14 (describing a country’s transitioning to the rule of law as a “very long” process).}

C. Tolerance for Legally Ambiguous Practices as a Development Strategy

Another reason for the marginal role of law in Chinese development assistance relates to the Chinese government’s tolerance for legally ambiguous practices. Legally ambiguous practices are a central element of Chinese development assistance projects.\footnote{It should be borne in mind, however, that violations of local laws are not unique to Chinese companies and conditions in Chinese companies are typically comparable to the conditions in local businesses. Brautigam, supra note 1, at 299–301.}

Chinese development programs have given rise to forms of informal economy that exist outside formal government monitoring and taxation. For instance, Chinese investments into sub-Saharan countries have coincided with the rapid growth of the informal economic sector in these countries. The informal economy consists of a large number of Chinese immigrants (estimates of their number range from a few hundred thousand to over a million), who run small-scale businesses serving Chinese...
companies. These entrepreneurs are reportedly more accustomed to the lack of legal clarity than Western investors. Indeed, the unsettled legal environment of developing countries has been seen as a pull factor for Chinese investments.

The ability of Chinese entrepreneurs to operate in legally ambiguous environments and the Chinese government’s willingness to tolerate such practices are not surprising given China’s domestic development experience. Much of China’s development process has occurred in spite of, rather than based on, legal regulations. For instance, Donald Clarke has pointed out that the emergence of limited liability companies in China in the early 1990s occurred without a clear legislative basis. Similarly, as China opened its economy to international investors in the 1990s, its government tolerated a large number of small-scale investors from Asian countries, who were willing to operate in the outskirts of or beyond formal law. Only after the Chinese government deemed these initial investments successful was the legal framework put in place to attract more conservative investors.

Many consider Chinese tolerance for illegal and legally ambiguous practices a hallmark of the entire Chinese development model. Some Chinese development institutions acknowledge the beneficial role of legally ambiguous practices in China’s own development process. For example, the so-called household responsibility system replaced collective farming in the Chinese countryside in the 1980s. Under this system, the Chinese government assigned plots of land to individual households (rather than collective farms) and allowed the households to keep all surplus food produced on these plots. The abovementioned IPRCC working paper on development partnerships stresses that this model started as a

137. See Gu, supra note 65, at 577–78 (discussing Chinese entrepreneurs who compare commercial opportunities in Nigeria to China in the 1980s and 1990s).
138. Companies purporting to have limited liability had simply been able to secure a registration certificate to that effect from local authorities. In 1992, 480,000 such companies were established. The concept of limited liability (in contrast to a limited liability company) did, however, exist in Chinese civil law at the time. Donald C. Clarke, Judicial Innovation in Chinese Corporate Law, in LEGAL INNOVATIONS IN ASIA: JUDICIAL LAWMAKING AND THE INFLUENCE OF COMPARATIVE LAW 259, 261–62 (John O Haley & Toshiko Takenaka eds., 2014).
139. See Shen, supra note 26, at 35 (“Instead of . . . turning investors away, China stepped up its efforts to reform its domestic economic system, gradually improving its investment policy and legal framework to make it conducive to larger [investors].”).
140. Brautigam, supra note 1, at 301. This model (and the so-called “Beijing Consensus”) does not lead to the explicit negation of rights; rather, the question is about the desired “balance of individual rights and responsibilities” and the relative insignificance of rights in this balance. See RAMO, supra note 15, at 55.
widespread “illegal practice.”¹⁴² Relying on this example, the IPRCC working paper makes the case for tolerating legally ambiguous practices: “the most important implication here is that policies accommodated the spontaneous actions on the ground.”¹⁴³ From this perspective, formal law is not necessarily an instrument for social change, as many Western development practitioners have assumed,¹⁴⁴ but a potential impediment to it.

IV. THE SCOPE AND NATURE OF CHINESE LEGAL DEVELOPMENT ASSISTANCE

A. Advice on Law Reform

As mentioned above, the Chinese government and Chinese development experts see more uses for legal development assistance than previously. The most obvious example of Chinese legal development assistance concerns support for law reform in developing countries. Almost all donor states and multilateral organizations, such as the World Bank, provide such assistance.¹⁴⒌ Nowadays, the Chinese government also recognizes the value of such assistance.¹⁴⁶ In the context of the Belt and Road Initiative, Chinese legal scholars and practicing lawyers have urged interventions into developing countries with regard to their domestic legislation on tax law, company law, contract law, labor law, environmental law, and law relating to land expropriation.¹⁴⁷ Chinese assistance for law reform in

¹⁴². IPRCC, Development Partnerships, supra note 129, at 6.

¹⁴³. Id. For the consequences of this approach for Chinese land titles, see Eva Pils, Land Disputes, Rights Assertion, and Social Unrest in China: A Case from Sichuan 19 COUL. J. OF ASIAN L. 235 (2005).


¹⁴⁵. See Newton, supra note 2, at 24, 37–38 (providing an overview of The World Bank’s legal assistance programs and the relative donation amounts in particular nations, such as Kazakhstan in 1999).


developing countries may seem self-serving (as does, of course, Western rule of law aid), but it is easy to see why Chinese legal institutions and standards—foreign investment laws and environmental regulations, for instance—may appear more relevant to the perceived needs of developing countries than Western laws.

The Chinese government has provided advice on law reform in developing countries in a number of instances within and outside the context of the Belt and Road Initiative,148 but these instances are thinly documented in government reports and scholarship. Even Chinese scholars researching development cooperation find it difficult to access information on this kind of aid.149 But the 2014 White Paper does mention a rare example of such assistance. According to the white paper, a Chinese “expert team dispatched to Benin provided expertise to the drafting of the country’s Agricultural Law and Agricultural Administration Law.”150 The white paper provides no further information on this mission. Chinese databases containing academic journals, magazines, and news reports are silent about China’s legal assistance to Benin,151 and Chinese and foreign development experts interviewed for this Article did not provide any specific insights on it.

Nevertheless, the general nature of Chinese legal assistance to Benin may be inferred from the circumstances of this assistance. Chinese assistance for land law reform in Benin coincided with Chinese investments into agricultural land in that country.152 Around the time of the investments, the French language service of Xinhua—the official Chinese news agency—expressed concerns about the security of land titles in Benin,153 which at the time recognized customary land titles as having an equal status vis-à-vis formal land rules.


149. Interview L, supra note 148.
151. As of November 18, 2016, a search for the Chinese language words “贝宁” (Benin) and “农业法” (Agricultural Law) in the comprehensive China National Knowledge Infrastructure database produces 29 references. Besides a reference to the 2014 White Paper, supra note 27, none of these references discusses China’s legal assistance to Benin.
152. See DEBORAH BRAUTIGAM, WILL AFRICA FEED CHINA? 125 (2015) [hereinafter BRAUTIGAM AFRICA].
titles. Benin subsequently adopted a new land code in 2013, which aimed at securing land rights by formalizing the procedures for obtaining land titles. The new law also allowed foreign investors to enjoy up to fifty-year leaseholds to rural land. China likely offered this legal assistance to Benin to secure these land titles for Chinese and other foreign investors.

In general, Chinese assistance for law reform is not conceptualized as direct government-to-government assistance. For instance, Chinese models have undoubtedly influenced Vietnamese foreign investment laws, and Vietnamese scholars and officials have studied Chinese laws in much detail. However, assistance from China to Vietnam—in contrast to Japanese legal assistance to Vietnam—has not been framed as legal development assistance. Vietnamese development officials visit Chinese government offices as part of projects funded by donor states other than China. The ties between the two countries are, however, formalizing and the Chinese side is addressing legal issues in Vietnam in more explicit terms. China and Vietnam agreed to cooperate in legal matters and professional exchanges in 2016. In April 2017, a group of Chinese

154. See Brautigam, Africa, supra note 152, at 125 (“[I]n 2007 Benin’s National Assembly had passed a law granting customary land-tenure equal status with civil law property rights. . . .”).


156. See id. arts. 14 and 61.


160. See Nicholson & Kuong, supra note 2, at 157–60 (describing Japanese legal assistance to Vietnam as an “important moment for Japan, enabling it to move from micro-level technical assistance in economic matters, to offering its experience as an Asian model to another Asian state”).

161. Email from Dr. Nguyen Dinh Cung, President of Central Institute for Economic Management, Vietnam (Nov. 18, 2016) (on file with author).

environmental experts visited Vietnam to discuss Vietnam’s environmental laws and to examine the need for further Chinese assistance in this field, particularly in relation to Chinese companies’ operations in that country. 163

A similar form of legal influence exists between China and African countries with regard to foreign investment laws, in general, and special economic zones (SEZs), in particular. SEZs played an important role in the development of the domestic Chinese economy after the Maoist era, allowing the Chinese government to experiment with economic reforms and to attract foreign investors to geographically confined areas. 164 As Chinese companies began moving their operations out of China in the 2000s, the Chinese government started supporting the establishment of overseas SEZs to host Chinese companies abroad. 165 Chinese-supported SEZs have been established in five African countries, 166 and some of these countries reportedly modeled their SEZ laws on the Chinese example. 167

Finally, China has taken tentative steps to promote the harmonization of the laws of its trading partners. With regard to


164. BRAUTIGAM, supra note 1, at 96–97.

165. See generally id. at 100.

166. A UNDP report notes that the Chinese government has helped five African countries to establish and manage SEZs under the auspices of FOCAC process. Individual Chinese enterprises have set up SEZs in five other countries. See United Nations Development Programme (UNDP), If Africa Builds Nests, Will the Birds Come? Comparative Study on Special Economic Zones in Africa and China 12–13 (UNDP, Working Paper No. 06, 2015).

African law, such efforts have included conferences on legal harmonization and Chinese translations of books on this topic.168 The IPRCC has touted the benefits of legal harmonization for trade in the Asia-Pacific region.169

B. Legal Capacity-Building Programs

1. Training Modalities in the Legal Sector

The most visible part of Chinese legal development assistance consists of legal capacity-building programs. Such assistance is part of a larger shift in Chinese foreign aid from material assistance and infrastructure projects to human resources development, as described in Part I.B above.170 Capacity-building programs in the legal sector are less extensive than programs in other fields and typically they are framed as “cooperation” rather than as “aid.”171 Publicly available information indicates that hundreds of foreign lawyers, judges, and government officials have attended legal training courses in China.172 China Law Society, a “government-operated non-governmental organization,”173 offers law-specific training programs for foreign lawyers and officials as part of its foreign cooperation. The training programs include lectures and visits to government offices, courts, law firms, and cultural sights.174 The courses are small-scale and

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168. Mancuso, supra note 29, at 258 n.60.
171. See, e.g., China Law Society Introduction, CHINA LAW SOCIETY, http://chinalawsociety.com/Templates/Templates2.aspx?ColumnID=998 (last visited Feb. 17, 2017) (on file with author). Please note that the China Law Society website is currently unserviceable. All references to the “China Law Society’s website” in this Article are to the unserviceable website. Also note that the Author has copies of each of said references on file for continued access during this period of unserviceability.
172. For instance, China Law Society’s website indicates that 200 legal professionals from member states of the Association of Southeast Asian Nations (ASEAN) have attended training courses in China and that 50 lawyers participated in the first two China-Africa Legal Professionals Exchange Projects. See the information under “Legal Forum” at http://www.chinalawsociety.com (last visited Feb. 17, 2017) (on file with author). For other training courses, see infra notes 175, 186–187.
174. Dr. Gu Zhaomin, Director General of Overseas Liaison Department, CHINA LAW SOCIETY, Invitation to the Third Course of China-Africa Young Legal Professionals Exchange Program (Mar. 11, 2016) (on file with author).
offered for twenty to twenty-five participants from specific geographical regions, such as Africa and Northeast Asia.175

In addition to these training courses, thousands of lawyers—both from China and abroad—have participated in “Legal Forums,” which are essentially a series of regional conferences on legal issues.176 Chinese legal cooperation with African countries, for instance, takes place under the auspices of the FOCAC Legal Forum.177 Similar legal forums exist for several regions around the world.178 According to figures posted by China Law Society on its website, in 2015 nearly a thousand lawyers and government officials participated in six regional legal forums.179

There is an ongoing effort to scale up and institutionalize Chinese capacity-building programs in the legal sector. The first step toward this was the establishment of the African Law Institute in Xiangtan University in Hunan Province in 1998.180 The Institute became a venue for conferences and for hosting visiting African legal scholars, and it produced scholarship on African law.181 Since then,


176. Information posted on China Law Society’s website indicates that 5,220 Chinese and foreign lawyers participated in legal forums between 2005 and 2015. The figures provided by China Law Society do not distinguish between Chinese and foreign lawyers and they may be incomplete or inaccurate. Some of the lawyers may have participated in several forums. These figures are available under the regional “Legal Forum” tabs on China Law Society’s website, http://chinalawsociety.com (last visited Feb. 17, 2017) (on file with author).


178. Legal forums exist for (i) ASEAN countries, (ii) Eurasian countries, (iii) Latin American countries, (iv) Northeast Asian countries, (v) European countries, (vi) BRICS countries (that is, Brazil, Russia, India, China, and South Africa), (vii) South Asian countries, (viii) Japan and South Korea, and (ix) Oceanian countries. China Law Society, Introduction, supra note 171 (on file with author).

179. The actual figure probably exceeded a thousand lawyers, since the website does not appear to provide information on all legal forums organized in 2015. The information is provided under “Legal Forum” on the China Law Society website, http://www.chinalawsociety.com (last visited Feb. 17, 2017) (on file with author). As said, the figures provided by China Law Society do not distinguish between Chinese and foreign lawyers.


China Law Society has helped set up a number of “Legal Training Bases” for specific geographical regions to facilitate legal capacity-building programs.182

The Academy for International Business Officials (AIBO), a training institution within MOFCOM, is another significant training provider for China’s foreign development assistance programs.183 According to the most recently available figures, AIBO gave 933 seminars and workshops to more than twenty thousand foreign officials from 155 countries between 1998 and 2015.184 Again, little information exists on AIBO’s training activities.185 AIBO uploaded a large number of project documents detailing its training programs on

182. So far, at least the following “Legal Training Bases” have been set up: (i) In 2012, the Law Society established the China-Africa Legal Training Base in Xiangtan University. (ii) In 2014, China Law Society established another “Africa Training Base” in the Beijing Foreign Studies University. (iii) Between 2013–2013 the Law Society established a “North Asia Legal Training Base” at Jilin University in Changchun, where it has offered training courses for officials, scholars, and lawyers from North Korea, Mongolia, South Korea, Russia, and Malaysia (a country which is obviously not in North Asia). (iv) In 2015, the Law Society set up another “Legal Training Base” for Latin American lawyers at the Shanghai University of Finance and Economics, which is tasked with “cultivating Latin American legal talents who are knowledgeable of Chinese legal systems [sic] and friendly to China.” This project is part of a five-year program to provide 6,000 governmental scholarships and 6,000 training contracts for Latin American and Caribbean countries in various fields. See Yang Lan, Regulated by Law, GLOBAL TIMES (Oct. 12, 2015). (v) A “BRICS Legal Professionals Training Base” has been established at the East China University of Political Science and Law, also located in Shanghai. There are two training bases for ASEAN countries: (vi) “China-ASEAN Legal Training Base” and (vii) “China-ASEAN Training Base for High-Level Legal Talents.” References to these training bases are available under the regional “Legal Forum” tabs on China Law Society’s website, http://chlawsociety.com (last visited Feb. 17, 2017) (on file with author). Legal Training Bases have also been established for (viii) Eurasian lawyers at the Northwest University of Political Science and Law in Xi’an, and (ix) for European lawyers at the China University of Political Science and Law in Beijing. See Di si jie Zhongguo—Ya-Ou falü luntan zai Xi’an zhaokai (The Fourth China-Eurasia Legal Forum Held in Xi’an), CHINA LAW SOCIETY (Oct. 20, 2015), https://www.chinalaw.org.cn/Column/Column_View.aspx?ColumnID=734&InfoID=17028 (last visited Feb. 17, 2017) [https://perma.cc/94KE-WEW6] (archived Oct. 23, 2017) (on file with author); Di si jie Zhongguo—Ouzhou falü luntan zai Jing zhaokai (The Fourth China-Europe Legal Forum Held in Beijing), CHINA COURT (Oct. 17, 2016), http://www.chinacourt.org/article/detail/2016/10/id/2318045.shtml (last visited Feb. 17, 2017).

183. See Li & Zhong, supra note 170 (referring to the AIBO president’s statement that “the academy now has become China’s largest training center for officials from developing countries, especially for those from Africa.”).

184. The precise numbers are as follows: by the end of 2015, AIBO had received 22,143 officials including 584 ministerial-level officials. See AIBO, 2016 Seminar for Judges from 10 Southeast Asian Countries, Sept. 8–21, 2016 (on file with author).

185. For a rare example, see KING, supra note 1, at 161.
its website, but these were made unavailable during the writing of this Article.\footnote{AIBO's website, china-aibo.cn, included information about dozens of courses on legal topics and law enforcement, each of which was typically offered to 20–25 people. Some of these documents, cited in this Article, are on file with the author.}

The project documents describe AIBO's law-related training activities in some detail. Some of the training courses organized by AIBO are carried out directly by AIBO in its Beijing training facility, whereas others are organized by AIBO but carried out by various teaching institutions across China.\footnote{For instance, as of April 2016, AIBO had sent foreign officials to the China Maritime Police Academy to take part in fourteen seminars on “Law Enforcement at Sea for Developing Countries,” two seminars on “Law Enforcement at Sea for African French Speaking Countries,” and a workshop on “Boat Driving and Maintaining Skills for Cooperation in Patrol and Law Enforcement along the Mekong River.” See AIBO, Seminar on Maritime Law Enforcement for Asian Countries in 2016 (Apr. 8–Apr. 28, 2016) (on file with author).} Some training activities are of a general nature, introducing foreign officials to the Chinese judicial system.\footnote{Most training courses, however, cover specific topics in Chinese law. AIBO has offered training courses on Chinese intellectual property rights,\footnote{For instance, in 2012 AIBO organized a seminar on Chinese anti-trust law for twenty officials from African, Asian, and Eastern European countries. See AIBO, Seminar on Anti-Trust Law (Apr. 15–Apr. 28, 2012) (on file with author). Two years later the same seminar was offered to officials from Asian and Eastern European countries. See AIBO, Seminar on Anti-Trust Law for Asian and European Countries in 2014 (Mar. 20–Apr. 9, 2014) (on file with author).} anti-trust law,\footnote{In 2016, AIBO organized a “Seminar for Legal Personnel of Countries in Belt and Road Areas,” introducing 20 officials to topics such as “the Socialist Rule of Law System with Chinese Characteristics,” “China’s Judicial Reforms” and “Special Policy and Legal Practice of China’s Special Economic Zone and Free Trade Zone.” See AIBO, 2016 Seminar for Legal Personnel of Countries in Belt and Road Areas (Oct. 13–Nov. 2, 2016) (on file with author).} and taxation.\footnote{Yet other training courses focus on aspects of China’s foreign trade, exposing foreign officials to Chinese and international investment regimes.} The above-described Belt and Road Initiative has also been the subject of a legal training program.\footnote{The above-described Belt and Road Initiative has also been the subject of a legal training program.} AIBO has even trained foreign officials in the practices and legal framework of

\footnote{AIBO's website, china-aibo.cn, included information about dozens of courses on legal topics and law enforcement, each of which was typically offered to 20–25 people. Some of these documents, cited in this Article, are on file with the author.}
Chinese foreign development aid. AIBO also facilitates law enforcement training on policing and counter-terrorism. Some training courses are tailored for tackling law enforcement issues in specific countries. For instance, AIBO has facilitated a seminar for law enforcement officials in the Mekong River region. In 2016, AIBO supported a training course on counter-terrorism in Kenya.

In addition to China Law Society and AIBO, many other training providers exist in China. For instance, the Law Faculty of Peking University has offered seminars and training courses for African officials since 2001. The Chinese government also offers scholarships to English-taught degree programs in Wuhan University’s Master of International Law and Chinese Law Programme.

2. Substance and Intended Effects of Training Courses

While the four-week training courses facilitated by AIBO on specific fields of Chinese law probably cover some amount of technical detail, the training courses organized by the China Law Society are better described as cultural diplomacy and exchange rather than as technical training in substantive areas of law. The organizers of

196. The training, carried out by the Shandong Police College, covered topics, such as the Chinese judicial system, Chinese martial arts, and the use of information technology in Chinese policing. See AIBO, 2016 Seminar for Senior and Middle-rank Police Officers of African Countries (May 10–30, 2016) (on file with author).
197. KING, supra note 1, at 49.
198. AIBO, List of MOFCOM Degree Education Programs (Apr. 25, 2016) (on file with author).
199. See supra notes 189–195. Most of the materials relating to the training courses—handouts, syllabuses, and slides—are not publicly available and could not be obtained from the course facilitators for this Article. However, some information about the courses is available on the Internet. News releases and reports, internet postings, publicly shared invitations to China Law Society’s training courses, and the formerly available AIBO project documents outline the broad content of these training courses. For a news release, see, FOCAC, FIRST AFRICAN LEGAL TRAINING PROGRAMME OPENED (Sept. 15, 2014), http://www.focac.org/eng/xxxx/11191650.htm (last visited Feb. 27, 2017) [https://perma.cc/856B-QP22] (archived Jan. 10, 2018); for a news report, see Li & Zhong, supra note 170; for an invitation, see Gu, supra note 174. As mentioned, this Article also benefits from course materials obtained from foreign participants in two training courses organized by China Law Society. See supra note 32.
200. This goal is made explicit in a news release about the First African Legal Training Programme. See FOCAC, supra note 199. The diplomatic goals distinguish Chinese legal training programs from the more technical Japanese training programs. See Nicholson & Kuong, supra note 2, at 175. AIBO training courses seem to cover
China Law Society’s training courses seem to make an effort to portray the Chinese legal system in the best possible light to foreign participants. Some of the lecturers obtained to speak in these courses are prominent, politically moderate Chinese legal scholars from elite Chinese universities. Such high-level scholars have included Professor Zhang Wenxian, an early promoter of individual rights in China, and Professor Wang Liming, the Vice President of the elite Renmin University in Beijing, who has been an important participant in Chinese civil law reforms.201 Both scholars can be relied upon to deliver an optimistic and politically correct progress story about the development of socialist rule of law in contemporary China.202 Some lecturers have politically conservative profiles, 203 while other instructors seem to have been chosen for their expertise on specific legislation.204

The abovementioned training courses organized by the China Law Society aim to present an overall picture on Chinese law and society. In a four-week course offered to African lawyers in 2014, Professor Zhang Wenxian lectured on “[t]he Construction of Legal System and the Development of Rule of Law in China,” and Professor Wang Liming gave a lecture entitled “General Introduction to Chinese Civil Law and Chinese Property Law.”205 Other topics in the course concerned human rights and the Chinese constitution, the handling of foreign-related matters, Chinese financial law, company law, and law on foreign investments.206 Legal issues relating to the Chinese labor system were also discussed.207 A participant reported that the absence of freely organized labor unions, which is a sensitive

more specific ground than the trainings organized by China Law Society. See supra notes 189–195. 201. Program for the First CALPEC Course (China-Africa Legal Professionals Exchange Project), CHINA LAW SOCIETY (Sept. 1–30, 2014) (on file with author) [hereinafter CALPEC Course].

202. Professor Wang Liming has participated in Chinese law reform as a member of the National People’s Congress. See He Qinhuai et al., 60 Leading Figures of Law in China over Past 60 years, CHINA L. 62, 63 (2009). Professor Zhang Wenxian has served as Vice-President of Jilin University and as a representative of the CCP in Jilin Provincial Higher People’s Court. Id. at 76. For a representative work by Zhang Wenxian, see ZHANG WENXIAN, FAZHEXUE FANCHOU YANJIU (Categories of Legal Philosophy) (2001). For a representative work by Wang Liming, see WANG LIMING, WOGU MINFADIAN ZHONGDA YINAN WENTI ZHI YANJIU (Major Problems in China’s Civil Code) (2006). I have discussed Professor Wang’s and Zhang’s scholarship and ideological projects in SEPPANEN, supra note 8, at 37–38, 110–13.

203. This is true of Professor Mo Jihong, a researcher with the China Academy of Social Science, who lectured on human rights in a course offered for African lawyers. See CALPEC Course, supra note 201. For Professor Mo’s political views, see David Bandurski, The “Black Hands” of Occupy Central, CHINA MEDIA PROJECT, http://cmp.hku.hk/2014/10/10/36410/ [https://perma.cc/764B-LC6L] (archived Nov. 7, 2017).

204. CALPEC Course, supra note 201.

205. Id.

206. Id.

207. Id.
topic in China, was explicitly addressed in this context. The time allotted for each topic—about three hours—did not allow but for a general discussion of key legal concepts and policies in each field. A lecture on Chinese foreign investment law in a course offered to African lawyers in 2016, for instance, provided a formalistic overview of the permitted types of foreign investment vehicles and the sectors of investment that are open to foreigners in China.

These lectures seem to portray the Chinese legal system as one that is steadily improving. As one African participant in a training course organized by the China Law Society reports:

> China is now embracing the concept of Rule of Law with Chinese characteristics. In the 18th Congress of the National People’s Congress (NPC), President Xi Jing Pin further confirmed the Party’s intention to promote the rule of law in China.

Such statements are in line with the stage-based narrative on legal development advanced by mainstream Chinese legal scholars. In contrast to the politically conservative voices in the Chinese legal academia, the mainstream view does not vilify Western-style liberal legal institutions. Instead, Chinese mainstream legal scholars conceptualize China’s development as the process of catching up with Western models, while still stressing the uniqueness of the Chinese development experience. As an optimistic progress narrative, this view ignores important trends in contemporary China. In the past few years, the state has reversed the course of legal reforms, for instance, detaining a number of rights advocates and activist lawyers.

Anecdotally, it seems that the instructors in legal training courses—who are, of course, a trusted group of scholars—have

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208. Telephone interview with a course participant (Nov. 2, 2016) (notes on file with author). For Chinese labor unions, see Anita Chan, China’s Trade Unions in Corporatist Transition, in ASSOCIATIONS AND THE CHINESE STATE: CONTESTED SPACES 69 (Jonathan Unger ed., 2008).


211. See, e.g., SHIGONG JIANG, FAZHI YU ZHILI GUOJIA ZHUANXINGZHONG DE FALÜ (Legal System and Governance: Law in a Transforming State) 9 (2003).

212. See, e.g., Xia Yong, Shizilukou Hua Fazhi (The Rule of Law at the Crossroads), BIANYUAN SIXIANG 138, 142 (2008).

213. See generally Carl F. Minzner, China’s Turn against Law, 59 AM. J. COMP. L. 935 (2011); EVA PILS, CHINA’S HUMAN RIGHTS LAWYERS: ADVOCACY AND RESISTANCE (2015).
considerable discretion in deciding how to teach these subjects.\footnote{1214} An instructor of AIBO courses interviewed for this Article noted that the instructors are broadly aware of topics that should be avoided in AIBO courses—human rights, labor unions, and social inequality—but that they may, nonetheless, raise these issues, for instance, by asking course participants to contemplate the social costs of China’s development process.\footnote{1215} Other instructors feel able to discuss these issues at least in the courses organized by the China Law Society.\footnote{1216} Sometimes instructors deliver diametrically opposed messages: one instructor may seek to justify certain social costs of development projects on the basis of their economic benefits, whereas another instructor may object to the same costs.\footnote{1217} This picture conforms to what is known of Chinese legal capacity-building programs in other fields of development cooperation. As regards agricultural training courses, for instance, there is “no evidence of an overbearing, centrally directed ‘Beijing Consensus’ being peddled through the courses.”\footnote{1218} Instead, capacity-building programs in this field are diverse, “muddled and disorganized.”\footnote{1219}

At least some of the training courses are not constructed solely to disseminate information about the Chinese legal system to foreign lawyers; they also seek to facilitate a dialogue between the Chinese hosts and foreign lawyers. African participants in training courses organized by the China Law Society receive lists of topics that are of interest to the Chinese course organizers. These topics have included the role of law in economic globalization, the protection of traditional knowledge in African law, and the role of customary law in African legal systems.\footnote{1220} The topics are discussed in class, and significant time is allotted to discussions between the lecturers and the course participants.\footnote{1221}

While the overall aim of the training courses does not seem to be the promotion of a distinctly Chinese view on the role of law in social

\footnote{1214} \textit{Interview D, Beijing (Jun. 2016) (notes on file with author); Interview F, Beijing (Jun. 2016) (notes on file with author); Interview I, Hong Kong (Jul. 2016) (notes on file with author). A MOFCOM manual on foreign aid training requires that the content of the training courses be in line with Chinese foreign policy objectives and “embody the fruits of China’s economic development.” MOFCOM, \textit{SHANGWUBU DUIWAI YUANZHU PEIXUN XIAMU SHISHI GUANLI GONGZUO SHOUCE (2010 NIAN 8 YUE XIUDING BAN}) (MOFCOM Manual for the Management of Foreign Aid Training, as Revised in Aug. 2010) art. 60 (on file with author).}

\footnote{1215} \textit{Interview K, Beijing (Jun. 2017) (notes on file with author).}

\footnote{1216} \textit{See supra text accompanying note 208.}

\footnote{1217} \textit{Interview D, supra note 214.}

\footnote{1218} \textit{Henry Tugendhat \\& Dawit Alemu, Chinese Agricultural Training Courses for African Officials: Between Power and Partnerships, 81 \textit{World Dev}. 71, 79 (2016).}

\footnote{1219} \textit{Id.}

\footnote{1220} \textit{CALPEC Course, supra note 201.}

\footnote{1221} \textit{Telephone interview, supra note 208. In a four-week course offered to African lawyers, three afternoons were reserved for discussion with Chinese lecturers and the course participants. See CALPEC Course, supra note 201.}
and economic development, instructors sometimes discuss development models in explicitly normative terms. For instance, a course offered to African lawyers in 2016 included a lecture on the political aspects of Chinese investments in Africa. The instructor was highly critical of American “value-based diplomacy” in Africa and the American agenda of democracy promotion. According to the slides shown by the instructor, the American “claims of ‘democracy’ and ‘liberty’ [were] nothing but grant [sic] statements and gestures.”222 In the speaker’s view, Africans ought to look for “benefits in real terms: investment, economic and trade cooperation.”223 Echoing a statement in the *People’s Daily*,224 the instructor’s slides lamented the fact that a “tickle” of criticism about the Chinese neocolonialism and exploitation of natural resources in Africa had “struck a chord of dissonance” with African governments.225 The participants were told that such views were “biased and ill-grounded.”226

With the available information, it is impossible to know whether the training courses achieve their stated goals, which ultimately come down to increasing “friendship and cooperation.”227 At the outset, it appears that some short-term training courses fail to reach influential foreigners or turn course participants into experts on Chinese law. Still, at least some participants in these training courses are very satisfied with their experience,228 and the course evaluations are positive.229 It helps that the courses are free.230 In addition to a pleasant stay in China, the training courses provide an opportunity for lawyers from developing countries to tap into the potentially lucrative field of international business. For some course participants, the courses offer their first chance to come in touch with

222. Handouts from the Third China-Africa Project, supra note 209.
223. Id.
225. Handouts from the Third China-Africa Project, supra note 209.
226. Id.
228. Email from a course participant (Oct. 27, 2016) (on file with author); Email from a course participant (Oct. 28, 2016) (on file with author); Email from a course participant (Oct. 31, 2016) (on file with author). This anecdotal evidence conforms to Kenneth King’s survey of 200 Kenyan professionals, who took part in (non-legal) short-term training courses in China. According to King, the short-term training courses were overwhelmingly positive experiences for the participants, who were shown “some of the best that China can offer, whether in roads, railways, rice cultivation or rural development.” King, supra note 1, at 189. For a similar observation, see also Tugendhat & Alemu, supra note 218, at 79.
229. Interview K, supra note 214.
international commerce and the legal infrastructure that supports it. 231 Anecdotally, the training courses also seem to be able to influence participants’ views about the legitimacy of Chinese development policies. 232

C. Regulatory Compliance Support

Finally, a form of legal development assistance offered by the Chinese government is directed toward Chinese companies operating in developing countries. This form of assistance aims to ensure that Chinese companies comply with regulations in their host countries. As mentioned above in Part II.C, the tacit endorsement of illegal or legally ambivalent conduct is seen to be a constituent element of the Chinese development process. 233 At the same time, some Chinese government entities regard violations of law as a problem worth addressing. According to an IPRCC report on corporate social responsibility, Chinese companies operating in developing countries “face criticism for their lack of proper regulations on ensuring human value and employees’ rights and environment protection.” 234 The IPRCC report explains that Chinese companies’ “overseas behaviour [is] the extension of domestic behaviour,” and that the “[l]ack of legal restriction and moral guidance” in China has contributed to the illegal actions of Chinese companies abroad. 235

The Chinese government and entities controlled by it (including the China Banking Association, ExIm Bank, and Shanghai Stock Exchange) have issued guidelines on the corporate social responsibility of Chinese multinational companies, which stress the importance of complying with local laws and regulations. 236 Unsurprisingly, Chinese multinational companies do not comply with the guidelines calling for better regulatory compliance. 237 Nevertheless, there is some evidence of efforts by the Chinese government to guide Chinese multinational enterprises to contribute more to the host countries—among other places, Sudan, Kazakhstan,
and Brazil.\textsuperscript{238} Such guidance is, again, poorly documented, but some written sources on this issue do exist.\textsuperscript{239} For instance, Chinese foreign ministry officials have cited instances in which Chinese embassies have intervened in the illegal practices of Chinese companies.\textsuperscript{240} There are also some instances of Chinese multinationals attempting to improve the social effects of their operations with the help of international consulting firms.\textsuperscript{241}

\section*{D. Chinese Legal Development Assistance in Comparison}

As mentioned above, there are no official statistics on Chinese legal development assistance, whereas the OECD provides information on its members’ spending on legal and judicial development projects.\textsuperscript{242} Based on the OECD data, it is safe to conclude that Chinese legal development assistance is modest in comparison to the rule of law aid provided by large Western donor states and international development organizations. In 2015, the United States spent USD 1.4 billion on 454 projects in legal and judicial development.\textsuperscript{243} In the same year, the United Kingdom spent USD 80 million on 263 legal and judicial development projects around the world.\textsuperscript{244} Japan spent USD 156 million on legal development assistance, Germany spent USD 136 million, and Denmark—which donates about the same amount of concessional development aid as China—spent USD 38 million on this sector.\textsuperscript{245} (On the other hand, Russia reported no projects in legal and judicial development to the

\begin{itemize}
\item \textsuperscript{238} IPRCC, Corporate Social Responsibility, supra note 103, at 12.
\item \textsuperscript{240} See Chatman House, China’s Priorities in Africa: Enhancing Engagements 5 (2014) (detailing the efforts of Chinese embassies in handling issues abroad where companies hide illegal activity); Interview H, supra note 180.
\item \textsuperscript{241} The ExIm Bank, for instance, has used the Finnish consulting firm Pöyry for conducting environmental assessments of its projects. Bräutigam, supra note 1, at 303.
\item \textsuperscript{242} OECD DAC provides detailed statistics on ODA flows to legal and judicial development. See OECD Statistics, supra note 1.
\item \textsuperscript{243} In China, these activities included USD 2.6 million for a project to “create a more favorable environment for national administrative and criminal procedure law reform.” The United States also supported training on intellectual property enforcement in China to the tune of USD 130,000. Id.
\item \textsuperscript{244} Id.
\item \textsuperscript{245} Id. Nicholson and Kuong estimate that between 2005 and 2011, Japan donated approximately USD 80.6 million on legal development assistance. Nicholson & Kuong, supra note 2, at 172.
\end{itemize}
OECD.\textsuperscript{246} International development agencies also spend substantial amounts on rule of law projects. As of January 2017, the World Bank listed fifty-three active projects and nearly eight hundred completed projects on supporting the rule of law and the Bank’s active commitments on rule of law aid amounted to over USD 500 million.\textsuperscript{247}

Small-scale as it may be, Chinese legal development assistance is not insignificant. As demonstrated above, Chinese government entities have been particularly active in establishing and institutionalizing legal capacity-building programs. Together with the costs of running the legal training bases, organizing annual legal forums for hundreds of lawyers, and arranging the occasional mission to assist law drafting in developing countries, China’s spending on legal development assistance is probably comparable to the rule of law aid of small European donors, such as Belgium and Finland.\textsuperscript{248}

The early stages of the law and development movement in the United States offer an interesting point of comparison to Chinese legal development assistance. The first projects focusing explicitly on legal and judicial development were initiated in the United States in the 1960s. In both contemporary China and the United States in the 1960s, legal development assistance started as small-scale research projects and scholarly exchanges,\textsuperscript{249} as well as training courses offered to select groups of lawyers in developing countries.\textsuperscript{250} Much like the Chinese efforts in law and development in the late 1990s and 2000s,\textsuperscript{251} the first USAID grants on law and development were given to American universities and centers studying law and development.\textsuperscript{252}

In terms of its substance, however, Chinese legal development assistance differs from American legal development assistance in the 1960s and 1970s (let alone from more recent USAID rule of law programs). Whereas the American law and development movement in the 1960s was intent on spreading a form of pragmatic legal thought, which was marked by the use of empirical knowledge to solve social

\textsuperscript{246} OECD Statistics, supra note 1.


\textsuperscript{248} According to OECD statistics, Belgium spent USD 4.3 million on four legal and judicial projects in 2015. In the same year, Finland had 20 projects in legal and judicial development totaling USD 4.0 million. OECD Statistics, supra note 1.


\textsuperscript{250} Brian E. Butler, Title IX of the Foreign Assistance Act: Foreign Aid and Political Development, 3 L. & SOC'Y REV. 115, 121 n.20 (1968).

\textsuperscript{251} See supra text accompanying notes 180–181.

problems and skepticism about doctrinal law, Chinese development experts are rhetorically, and also in practice, hesitant about promoting a “Chinese model” of law and development.

V. AN IDEOLOGICAL CHALLENGE?

Legal development assistance to foreign countries may not be particularly high on the Chinese government’s agenda, but even the limited engagement of the Chinese government with such assistance challenges our current understanding about the global flows of legal knowledge. Legal knowledge (however distorted and partial) now flows from East to South, which is an important phenomenon in its own right. A different question is whether Chinese legal development assistance also poses a challenge to the policies and ideological predilections promoted through Western rule of law aid. This Part demonstrates that China’s idiosyncratic governance ideology and its foreign policy principles, as well as its role as a capital-exporting country, have created a distinctive bundle of tensions in Chinese legal development assistance, which further erodes its policy coherence.

A. Commonsense Assumptions, Commercial Interests, and Strategic Objectives

At the outset it must be emphasized again that the Chinese government does not seek to challenge concepts such as the “rule of law” or “human rights” on an explicitly ideological level. While the

253. See Trubek, Back to the Future, supra note 144, at 27.
254. See text accompanying supra note 218. Professor Lu Nan at Tsinghua University identifies three areas of similarity and four areas of difference between American legal development assistance since the 1960s till today and China’s Belt and Road Initiative. In terms of the similarities, (i) both strategies are undertaken by economically powerful countries; (ii) both strategies include a legal element; and (iii) both strategies have given rise to fierce interest conflicts and conceptual battles. In terms of the differences, (i) the international status of the U.S. as a superpower and China are different; (ii) the U.S., in contrast to China, possesses a mature legal system; (iii) the U.S. targeted first nearby countries, making cultural differences less problematic for American legal development assistance, whereas China’s Belt and Road Initiative comprises countries from Asia and Europe to Africa; and (iv) the U.S. was informed by centuries of colonial experience, whereas China has no such colonial tradition and is ethically opposed to colonialism. See Lu Nan, supra note 6, at 31–33.
255. As Teemu Ruskola points out, “the direction of cross-cultural legal exchanges has been disproportionally from West to East.” Teemu Ruskola, Legal Orientalism: China, the United States, and Modern Law 234–35 (2013).
Chinese leadership now describes “the culture of socialism with Chinese characteristics” as “a new option for other countries,” this option is advanced in vague and ideologically non-confrontational terms as a means to address the demands of “democracy, rule of law, fairness and justice.” 257 China’s resistance to transnational (Western) human rights and rule-of-law standards, as described in Part II.A above, helps explain China’s ideologically neutral posture. However, the Chinese government’s unwillingness to challenge the West ideologically is also due to the ideological predispositions of the Chinese political elite.

On a high level of abstraction, international development organizations, Western donor states, and the Chinese government are in agreement about the general ends of rule of law aid, even as regards the intrinsically valuable relationship between the rule of law and “democracy.” 258 International development agencies and Western donor states typically rationalize rule of law aid through the assumption that the rule of law is both instrumentally useful for fostering economic growth and intrinsically valuable for democratic and social development. 259


The Chinese government has no principled objection against this assumption. As the Chinese government’s White Paper on the Rule of Law states, “legal construction serve[s] economic and social development as well as the construction of a harmonious society.”\textsuperscript{260} Such statements are half-truths since they ignore the considerable efforts undertaken by Communist Party cadres to repress legal institutions and individual rights holders.\textsuperscript{261} Nevertheless, these statements reflect one aspect of the paradoxical governance mentality of the Chinese leadership. As far as it is possible to tell, contemporary Chinese leaders see themselves not only as inheritors and guardians of the people’s democratic dictatorship, but also as technocrats responding to the “objective needs of economic and social development”—a phrase that is used to explain the need for legal reforms in the White Paper on the Rule of Law.\textsuperscript{262} The Communist Party refers to the concept of the “rule of law” as an ideal, which is part of the “Chinese Dream,”\textsuperscript{263} and which is promoted as a “core socialist value” on billboards all over China.\textsuperscript{264}

On such a high level of abstraction, differences between various rule-of-law models do not come into play in Chinese legal development assistance. In contrast to Singapore, the Chinese government does not publically advocate an instrumentalist, “thin” version of the rule of law, which would be devoid of substantive rights.\textsuperscript{265} To be sure, in domestic debates conservative Chinese political leaders have warned liberal-minded lawyers and scholars against “publicly proclaiming Western constitutional democracy.”\textsuperscript{266}

Domestically, the Chinese government has also advocated a specifically “socialist” rule of law ideal, which is defined as (i) ruling the country according to law, (ii) implementing law for the people, (iii) promoting fairness and justice, (iv) serving the overall situation, and (v) following the party’s leadership.\textsuperscript{267} In the international arena,
however, the Chinese government does not promote a distinctively socialist or instrumentalist approach to the rule of law. Instead, it merely expresses concerns about the unilateral imposition of Western standards on developing countries. As long as no such standards are involved, the Chinese government can easily issue statements that encourage developing countries “to improve democracy and the rule of law.”

Moreover, the ever softening and relativizing conceptions of the “rule of law” among international development experts have reduced the need for Chinese development experts to formulate indigenous Chinese conceptions of law and development. The World Bank’s 2017 World Development Report describes “the rule of law” as a difficult to reach “ideal,” which eventually “emerges from a home-grown (endogenous) process of contestation.” Instead of a universalist rule of law ideal, the World Bank’s focus is now on the “role” of law in development in specific contexts. The Bank argues that “a fully modern legal system is not a precondition for rapid economic growth,” and that legal reforms need to be informed by localized and “[p]ragmatic policy design.” The Bank also recognizes that formal legal reforms may have negative consequences for ordinary people. Pragmatism, the view of legal development as a stage-based process, the quest for local solutions, and the skepticism towards the omnipotent power of law are all part of the Chinese government’s playbook on development policy. Unsurprisingly, the World Bank’s report was drafted in conjunction with Chinese scholars and officials.

There are also readily understandable commercial motives behind Chinese (and Western) legal development assistance, which further reduce the urgency of the Chinese government to challenge

268. See supra note 107 and accompanying text (describing how China does not desire to impose its own political standards on other countries).
270. WORLD BANK, WORLD DEVELOPMENT REPORT 2017, supra note 7, at 14.
271. Id. at 97.
272. Id. at 14–15.
273. The 2017 World Development Report explains how the passing of a “contract law” in a developing country may make matters worse for ordinary people when “the executive head of government [promises] to promote judges who favor some people in court cases . . . and, as a result, citizens might not trust the courts to . . . enforce contract law.” Id. at 71.
274. IPRCC, Development Partnerships, supra note 129, at 2, 6.
275. WORLD BANK, WORLD DEVELOPMENT REPORT 2017, supra note 7, at xvi.
Western rule of law aid on ideological grounds.\textsuperscript{276} Rule of law rhetoric offers a means for the Chinese government to remind developing countries about their need to “protect the personal and property rights of the Chinese investors, [and] respect the rule of law.”\textsuperscript{277} China has aimed at creating “an enabling legal and business environment” in African countries since the beginning of the 2000s.\textsuperscript{278} Capacity-building programs—legal forums, seminars, and training courses—provide a concrete means to advocate favorable legal changes in developing countries.\textsuperscript{279} Such commercial motives probably explain why China invited delegates from forty African countries to Beijing in 2010 to discuss “legal issues and resolution measures concerning the investment liberalization and facilitation between China and African countries.”\textsuperscript{280}

Chinese efforts to advise developing countries about Chinese environmental standards may be motivated by similar commercial interests. It is presumably in the interest of Chinese companies that these standards be clear and predictable and sufficiently modest.\textsuperscript{281} A major investor in developing countries, China is also concerned about the security of its investments abroad (as are, of course, Western governments). A concrete aim of Chinese legal capacity-building programs has been the establishment of a Sino-African dispute resolution mechanism, which is intended to replace European arbitration centers as a site for dispute resolution between Chinese and African companies.\textsuperscript{282} A policy paper outlining such a dispute settlement mechanism was circulated to the participants in the first FOCAC training course for African lawyers.\textsuperscript{283}

\textsuperscript{276} For commercial motives in Western rule of law aid, see \textsc{Stephen Humphreys}, \textit{Theatre of the Rule of Law: Transnational Legal Intervention in Theory and Practice} 125–31, 141–42 (2010).


\textsuperscript{279} See supra Part III.B.1 (detailing the changing Chinese legal education efforts).


\textsuperscript{281} See supra text accompanying note 162 (discussing Chinese environmental legal assistance in Vietnam).


\textsuperscript{283} China International Economic and Trade Arbitration Commission [CIETAC] & Beijing Foreign Studies University [BFSU], \textit{An Initiative on Creating China-Africa Joint Arbitration Center}, China Law Society (Sept. 21, 2014) (on file
Chinese legal development assistance is, hence, motivated by many of the same ideological assumptions and commercial interests as Western rule of law aid. This reduces the need for the Chinese government to formulate uniquely “Chinese” alternatives to the policies promoted under Western rule of law aid. At the same time, it also appears that Chinese legal development assistance seeks to serve China’s strategic interests, which are defined in direct juxtaposition with the West. As pointed out above, an aim of Chinese foreign policy is to resist transnational standards on human rights and the rule of law imposed by Western countries.284 These efforts are hampered by the low regard in which many in developing countries hold the Chinese political system.285 Legal forums, seminars, and training courses offer an opportunity for the Chinese government to try and convince elites in developing countries of the legitimacy of the Chinese approach to the rule of law and human rights—that is, to seek to increase the government’s “soft power.”286 thereby advancing Chinese economic and political interests.287 Even if the participants in these forums and courses will not find the Chinese government’s ambivalent approach to the rule of law and human rights ideologically appealing, they may accept it as a legitimate alternative among many—at least the trains run on time in China.288 It probably helps that descriptions of the Chinese development experience in Chinese development cooperation typically stay on a very general level.289


284. Gu & Carty, supra note 22, at 66.
285. Ofodile, supra note 1, at 576.
286. Chinese media frames legal training courses as attempts to increase China’s “soft power.” S. Sarkar, Sino-African Legal Exchanges Look toward Shared Values from New Era, GLOBAL TIMES (Jun. 3, 2015); Zhang, supra note 282. Cultivating foreign lawyers who are “friendly to China” is the explicit goal of the Latin American Legal Training Base; see also supra note 182 and accompanying text (detailing the development of “Legal Training Bases” to facilitate legal training programs).
288. This was of course a well-known excuse for fascism, which seeks to highlight the efficiency of fascist regimes. See, e.g., G.A. Borgese, The Intellectual Origins of Fascism, 1 SOCIAL RES. 458, 471 (1934).
289. A single talk in the Second FOCAC Legal Forum, for instance, addressed the following topics: (i) Chinese experiences in the construction of the legal system, (ii) consultation and communication processes in law-making, (iii) mediation in civil disputes, (iv) public security; (v) integration of scientific, democratic and law-based administration; and (vi) the “supervision by the CCP, the government and the society.” See FOCAC, THE SECOND FOCAC-LEGAL FORUM CONCLUDING REPORT, supra note 145. According to one account of this forum, “many of the presentations were not very inspiring, and mainly summed what the country of the speaker at the podium could contribute to the cooperation in the field of law and regulation, with most ending with
Legal development assistance programs also enable the Chinese government to provide concrete support for other authoritarian governments by disseminating information about the Chinese uses of law to suppress its dissidents. Andrew Nathan has described this as “the most important technique that authoritarian governments have learned from one another.”

B. Incoherent Objectives and Ideological Disagreements

The disparate motives of legal development assistance have not transformed into coherent development policies either in Western or in Chinese development cooperation. For instance, the World Bank’s efforts to build institutional rule of law for the regulation of business activity have clashed with its aim to advance social justice objectives through legal means.

The tensions in Chinese legal development assistance are somewhat different. China’s newly assumed role as a capital-exporting country, which benefits from transnational standards on investment protection, fits poorly with its longstanding advocacy for national self-reliance and its opposition to transnational governance standards. This tension can be observed in Chinese development policy statements. Chinese government officials have made it known to African governments that “well-functioning laws and regulations to assure investors” are a prerequisite for China’s continued support to these countries—while at the same time urging these governments to keep “to the path of development that suits [their] own national conditions.”

Similarly, a report by the Chinese State Council’s National Development and Reform Commission (NDRC) notes that the above-described Belt and Road Initiative “respects the paths and modes of development chosen by different countries.” At the same time, the report calls for “[u]nimpeded trade” and explains that China “should speed up investment facilitation, eliminate investment barriers, and push forward negotiations on bilateral investment protection.

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290. Nathan, supra note 256, at 162. The above-described AIBO seminars, for instance, have introduced foreign officials to Chinese law enforcement and policing techniques. See text accompanying supra notes 185–196.

291. Santos, supra note 8, at 253, 275–76.


293. NDRC, supra note 80.
agreements . . . to protect the lawful rights and interests of investors.” As China’s own development experience demonstrates, it is by no means clear that a developing country should make “unimpeded trade” and investor-friendly laws and trade agreements its first priority.

In order to articulate a Chinese alternative to the policies promoted through Western rule of law aid, Chinese development experts would have to determine what lessons China’s development experience yields to developing countries—and what that experience was in the first place. When answering these questions, Chinese development experts may rely on two broad narratives about the role of law in development. On the one hand, Chinese development experts may adhere to the stage-based development narrative, described in Part II.B above. This narrative assigns formal law a marginal, yet necessary, role in China’s economic and social development, and it effectively offers a legislative roadmap for other developing countries. According to this narrative, China started with protectionist laws and a rudimentary legal system and gradually “created a more liberal foreign trade and business environment for enterprises” through new legislation. This narrative emphasizes the predictability of economic and social development and it helps legitimize calls for transparent and efficiently enforced legislation in China’s trading partners.

On the other hand, Chinese development experts may choose to extol the virtues of legal ambiguity, described in Part II.C above, without offering a stage-based blueprint for the development process. From this perspective, there are no predetermined development paths or legislative roadmaps for development. Instead of maps and blueprints, the experimental narrative offers as its lesson an ethos of pragmatism and political will—described as “a preference for experimentation,” “strong leadership,” and “an open-minded learning spirit.” Whereas the stage-based model provides globally applicable

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294. Id.
295. A strong argument can be made that China’s economic growth occurred against the backdrop of government-imposed import barriers, which protected China’s state-run domestic industries from foreign competition. See BARRY NAUGHTON, THE CHINESE ECONOMY: TRANSITIONS AND GROWTH 381 (2007).
296. IPRCC, Trade Facilitation, supra note 169, at 11, 15.
297. Id. at 28; see also CHINA-DAC STUDY GROUP, supra note 90, at 14 (noting the following: “China’s experience supports much of the thinking on the role of small farmers in Africa’s agricultural revolution. . . . This demands . . . [s]ecuring rights and interests of small holders in land policies, including the rights and interests of women farmers.”).
298. IPRCC, Development Partnerships, supra note 129, at 7. The narrative on strong leadership also appears in legal training courses. The above-mentioned instructor, who lectured against American “value-based diplomacy” in the Third Course of China-Africa Young Legal Professionals Exchange Program, concluded that an important aspect of “China’s development story” was the necessity to “follow firmly the
solutions to development issues, the experimental narrative leads to the conclusion that “[f]oreign advice and technology must adapt to local conditions.” Taken to its conclusion, this narrative justifies resistance toward all foreign influences, including the stage-based development model.

In contrast to the American law and development movement, neither of these narratives is associated with a specific form of legal thought. The stage-based narrative can be used to support both formal legal reforms and the anti-formalist approach to law, according to which formal law should yield to pragmatic policies when substantively more important interests so require. The experimental narrative provides arguments to resist legal formalism, but it does not prevent the conclusion that China managed the sequencing of its reforms well, introducing the right amount of legal formalism at the right time. From both perspectives, enhancing legal formalism may be a justified development policy.

In addition to these two mainstream narratives, Chinese development experts may also opt for a self-consciously post-modernist and critical approach to law and development. This approach, as promoted by scholars such as Professor Lu An at Tsinghua University, does not perceive development as a deterministic stage-based process, nor does it idealize strong leadership unhinged by rules. Instead, this approach looks for legal models in the private sector and in (non-Western) legal cultures.

leadership of [the] party and [the] government.” See supra note 222 and accompanying text; Handouts from the Third China-Africa Project, supra note 209.

299. IPRCC, Trade Facilitation, supra note 169, at 9 (arguing that “for most countries trade liberalization can improve poverty reduction”).

300. IPRCC, Development Partnerships, supra note 129, at 10.

301. Id. at 21–22.

302. See Trubek, Back to the Future, supra note 144, at 27.

303. Kennedy, The “Rule of Law,” supra note 119, at 106. For the argument that clear formal rules (relating to property rights) may be socially and economically undesirable, see Kennedy, Some Caution about Property Rights as a Recipe For Economic Development, supra note 11, at 187, 209–12. For the argument that ambiguous property rights may be economically efficient, see David D. Li, A Theory of Ambiguous Property Rights in the Transition Economies: The Case of the Chinese Non-State Sector, 23 J. COMP. ECON. 1, 3 (1996). For a critique of Li’s argument, see Clarke, supra note 126, at 105–06.


305. This is the effect of Richard Posner’s argument in Posner, supra note 123, at 9. See also Posner, supra note 16, at 3 (noting that “it would be entirely consistent with [the philosophical stand of] pragmatism not to want judges to be pragmatists”) (emphasis original). The pragmatic attitude is echoed in the World Bank’s calls for pragmatic development policies, which aim to bring about the ideal of the “rule of law.” WORLD BANK, WORLD DEVELOPMENT REPORT 2017, supra note 7, at 14. For legal formalism and pragmatism, see supra note 16 and accompanying text.

306. Lu Nan, supra note 6, at 36–37.
The choice between these narratives and their different versions is not ideologically neutral. The emphasis on strong leadership, experimentalism, and native solutions is a politically conservative position even in China. Such language is attractive to those Chinese political leaders, scholars, and development experts who are opposed to the Westernization of China’s legal and political institutions. In contrast, the stage-based narrative, which argues that certain types of law are necessary at certain stages of development, appeals to politically moderate Chinese legal scholars and development experts, some of whom lecture in Chinese legal training courses. Although moderately reformist, these scholars are not ostracized in Chinese legal academia and wider society but, instead, occupy key positions in it.

Both groups can find support for their views in the Communist Party’s publications on the rule of law. Also, the self-serving nature of Chinese foreign policy is a contested matter. At least in private conversations, some Chinese development experts are concerned about the selfinterested nature of Chinese development assistance.

The above-described development narratives have specific implications for Chinese foreign policy goals. This makes choices between them even more difficult for development experts. The stage-based narrative, combined with a formalist approach to law, emphasizes transparency and effectively enforced legislation, thereby serving China’s interests as a capital-exporting country. The language of legal modernization can also be used to advocate for predictable laws and regulations, formal property rights, and clearly defined administrative powers. At the same time, the stage-based narrative supports protectionist measures, and in this sense it is in a conflict with China’s aim to liberalize world trade.

307. See, e.g., ZHU SULI, FAZHI JI QI BENTU ZIYUAN (RULE OF LAW AND ITS NATIVE RESOURCES) 22–23 (2d ed. 2004); Zhu Suli, Political Parties in China’s Judiciary, 17 DUKE J. OF COMP. & INT’L L. 533, 539 (2007). Paradoxical as it may be, the conservative emphasis on experimentation and strong political will does not necessarily lead to the renunciation of legal formalism. See also Benjamin L. Liebman, Legal Reform: China’s Law-Stability Paradox, 143 DAEALUS 96, 96 (2014); infra text accompanying note 324.

308. As mentioned above, the training courses have given space to moderately liberal scholars, such as Wang Liming and the more conservative Zhang Wenxian. See supra note 202 and accompanying text.

309. For state-sanctioned arguments supporting both positions, see CENTRAL POLITICAL AND LEGAL COMMITTEE, supra note 267. This document describes the development process both in terms of (Marxist) stage-based determinism (id. at 15) and as a context-based phenomenon. Id. at 30.

310. Interview D, supra note 214; Interview L, supra note 148. For a critical statement of the selfinterested nature of legal assistance in China’s Belt and Road Initiative, see Lu Nan, supra note 6, at 38.

311. See supra text accompanying notes 277, 292.

312. For these aims, see NDRC, supra note 80.
formal law may also do a disservice to Chinese enterprises, which thrive in informal legal environments.  

Combined with legal pragmatism, the experimental narrative better fits the Chinese government’s ambivalent attitude toward legality. This narrative also supports Chinese efforts to resist Western-imposed transnational standards on the rule of law and legitimizes Chinese enterprises’ freewheeling approach to legality. Ultimately, however, the experimental narrative amounts to the rather unsubstantial conclusion that all development is context-specific. Nothing in this narrative prevents lawyers in developing countries from concluding that the establishment of Western-style legal institutions is the pragmatically desirable policy goal for their countries.

C. Exporting Political Conventions—and Taboos

The knowledge-sharing aspect of Chinese legal development assistance is further complicated by China’s idiosyncratic state structure—ultimately by its one-Party system—and by the specific political ideology that accompanies this structure. In short, China’s domestic ideological conventions and taboos make it difficult for Chinese development experts to openly discuss the Chinese government’s actual uses of law, even if information about such practices would be welcome for China’s authoritarian development partners. The secrecy with which the Chinese government and Chinese development experts treat legal development assistance programs is symptomatic of such taboos.

Again, it needs to be noted that the obfuscation of domestic practices in rule of law aid is not unique to Chinese development assistance. For instance, the case can be made that the “US legal system is seriously deficient” in meeting the World Bank’s criteria for the rule of law. Nevertheless, Chinese legal development assistance

313. See supra text accompanying notes 133–36.
314. IPRCC, Development Partnerships, supra note 129, at 10. As David Trubek has pointed out, a significant strand of law and development scholarship prioritizes context and experimentation. Trubek, Law and Development, supra note 252, at 325–27.
317. Nathan, supra note 256, at 162.
318. The limited provision of free legal services in the United States is detrimental to realizing the equal access to justice, which the World Bank defines as
must grapple with a form of post-totalitarian ideology, which comprises a considerable element of informal, extra-legal use of power in a legal system that is formally described as autonomous in the concrete adjudication of cases. In reality, politically sensitive cases in China are commonly decided outside the formal legal system. A number of political dissidents are held in extra-legal detention centers without the benefit of the procedural rights supposedly guaranteed by China’s formal legal system. The people’s courts cannot compel powerful state organs to comply with their decisions without obtaining the Chinese Communist Party’s (CCP’s) endorsement. Violations of law by government officials, such as the unlawful expropriation of land use rights, are endemic. Perhaps most important, the Chinese development process builds on an ambivalent approach to legality, which frequently allows private citizens and companies to experiment with illegal and legally ambiguous practices.

Information about the actual workings of the Chinese party-state is mostly repressed in Chinese policy statements on the rule of law. Prominent pronouncements on the rule of law by the CCP do not condone extra-legal uses of power or violations of law by government officials and party cadres. On the contrary, such pronouncements instruct Chinese government officials and party cadres to “handle matters strictly according to the law” and to “perform duties strictly according to law.”

The emphasis on legality in the Party’s statements on the rule of law is understandable. The CCP controls the Chinese legislative processes and wishes to see laws enforced uniformly throughout China. At the same time, the CCP is unwilling to allow the Chinese judiciary to hold the Party accountable for violations of the law. As a consequence, the Party approaches the rule of law in a paradoxical manner. On the one hand, it seeks to establish an autonomous legal one of the criteria of the rule of law. KENNETH WINSTON, ETHICS IN PUBLIC LIFE: GOOD PRACTITIONERS IN A RISING ASIA 143–45 (2015).


322. Pil, supra note 143, at 288.

323. See supra notes 138–140 and accompanying text.

324. CENTRAL POLITICAL AND LEGAL COMMITTEE, supra note 267, at 109.

325. Id. at 132–35.

326. Ling Li, supra note 321, at 71–72.
system—that is, the supremacy of the law, including judicial independence in the concrete adjudication of cases. On the other hand, it seeks to destabilize this autonomy through various means. For instance, the Party’s documents on the rule of law include suggestive statements about the “leadership of the Party” and the inseparability of politics from adjudication. Such statements strengthen the Communist Party cadres’ informal knowledge about desired power relations between Party organs and the judiciary.

In theory, some of the elements of the CCP’s paradoxical approach to law could be exported to foreign countries, just as the Leninist party-state was exported to China in the 1920s. A Chinese development expert could explain to foreign lawyers that the CCP has found a somewhat paradoxical approach to the rule of law helpful for maintaining its power and reaching its other policy goals. Political dissidents, the development expert could point out, are handled outside formal legal proceedings, and the general population is kept satisfied with a limited amount of rights protection, while its political expectations are kept low by implausible and cynical public statements about the rule of law.

Officials from authoritarian countries might find such exchanges genuinely valuable, but they would not do much to increase China’s soft power among the liberal elites in developing countries. Moreover, it would be difficult for Chinese development experts to explain what the Party’s actual relationship to formal law is, given the diffuse and informal nature of this relationship. Most important, frank accounts of the Party’s actual uses of law would be contrary to the Party’s own ideological statements about the supposed role of the legal system in China. Because of such ideological pressures, Chinese development experts are tempted to produce highly idealized accounts of Chinese law for foreign consumption. To the extent that

328. Id. at 11, 30.
331. See supra text accompanying note 290.
332. Suli, Political Parties in China’s Judiciary, supra note 307, at 537.
333. See supra notes 322 and 325.
334. An IPRCC report, for instance, asserts rather improbably that “China Customs has established a perfect intellectual property rights enforcement system.” IPRCC, Trade Facilitation, supra note 169, at 15.
references to the Communist Party are made in Chinese development policy documents, they are very cursory.\footnote{335}

In conclusion, it is understandable why some Chinese development experts believe that the Chinese development experience cannot be exported to foreign countries. To quote an IPRCC report, “[t]here is no ‘China model’ that could be replicated easily.”\footnote{336} Some development experts interviewed for this Article experience the uncertainties surrounding the development aid narratives as confusing and troubling.\footnote{337} Others are simultaneously overwhelmed and amused by the notion that Chinese development experts are now expected to advise other countries on the relationship between law and development when this relationship is an open question at home.\footnote{338}

In lieu of a coherently articulated Chinese approach to law and development, Chinese development experts and government officials are left to reproduce many of the same vague and poorly justified assumptions about law and development that mark much of Western rule of law aid. As a report on Chinese development assistance acknowledges, “China does not have its own understandings or discourses of development, independent from Western historical, political and economic discourse.”\footnote{339} Making Chinese legal development assistance more ideologically explicit will not solve this issue because the ideological confusion is already present in the Communist Party’s ideological statements.

Even without a coherent message, Chinese legal development assistance has disrupted the global circulation of knowledge about law and development. The questions being asked under the auspices of Chinese legal development assistance may well generate a new

\footnote{335. The aforementioned IPRCC report outlining lessons from China’s development experience notes in a footnote that “China has two sets of institutions: the government/administrative institutions which have thousand years of history, and [the CCP] system which also runs through central, provincial and local levels.” The authority for this statement is Professor Kenneth Lieberthal’s textbook on Chinese politics. The authors state that they will not discuss the role of the Communist Party further in the report, since this would not be “relevant to developing countries.” IPRCC, Development Partnerships, supra note 129, at 11–12. For the textbook, see KENNETH LIEBERTHAL, GOVERNING CHINA: FROM REVOLUTION THROUGH REFORM (2nd ed. 2003). Anecdotally, it appears that at least some foreign participants in Chinese legal training courses are left confused about the role of the Party in the legal system. Telephone interview, supra note 208.}

\footnote{336. IPRCC, Development Partnerships, supra note 129, at 12.}

\footnote{337. Interview D, supra note 214; Interview F, supra note 214.}

\footnote{338. Interview L, supra note 148; see also Benjamin L. Liebman, Authoritarian Justice in China: Is There a “Chinese Model”?}, in THE BEIJING CONSSENSUS?, supra note 15, at 248 (cautioning against “thinking that the Chinese approach [to legal development] will travel well” and noting that “the central question is whether the Chinese Model can work in China”).

\footnote{339. ZHANG, GU & CHEN, supra note 1, at 3.}
tradition of enquiry (if not coherent answers). 340 Moreover, Chinese engagement with the legal profession in developing countries may well change the expectations that such lawyers have regarding legal development cooperation. In particular, the openly self-interested, commercial nature of Chinese legal development assistance stands out in contrast to Western rationalizations of rule-of-law aid, which typically perceive the self-interested nature of such aid an embarrassment. 341 The narrative of the mutually beneficial, commercial nature of this assistance conveys a sense of respect to foreign lawyers, which clearly has been missing from the more missionary Western rule of law programs. 342

VI. CONCLUSIONS

The Chinese government’s efforts to provide legal development assistance to developing countries suggest that China is no longer willing to be solely at the receiving end of rule of law aid. As is the case with many Western donors, the Chinese government advocates investor-friendly laws and trade agreements to protect Chinese investments abroad. The Chinese government also offers various legal capacity-building programs to foreign lawyers. These programs aim to introduce Chinese law to foreign lawyers and to persuade them of the legitimacy of heterodox alternatives to Western notions about law and development.

Unsurprisingly, Chinese efforts in legal development assistance are riddled with tensions. On the one hand, Chinese development experts advance often repeated (but elusive) Western notions about the importance of “the rule of law” for the development process. On the other hand, Chinese development experts extol experimentation, at times suggesting that tolerance for legally ambiguous practices is beneficial for economic development.

Amid these tensions, there are some consistent themes. In contrast to their Western colleagues, and despite the pressures to advocate investor-friendly legal reforms, Chinese development

340. For traditions of enquiry, see ALASDAIR MACINTYRE, WHOSc JUSTICs? WHICH RATIONALITY? 326-27 (1988). This book has inspired the name of this article. See also Dowdle & Prado, supra note 36, at 41-42 (noting that the dialogue about the “Beijing Consensus” may result in “new forms of knowledge”).

341. WINSTON, supra note 318, at 141.

342. See Ofodile, supra note 1, at 541 (describing the promise of a win-win relationship with China a “tantalizing” prospect for African policy-makers). For an official Chinese version of the mutual beneficial nature of Chinese aid, see The Eight Principles for Economic Aid and Technical Assistance to Other Countries, supra note 110.
experts are generally hesitant to prescribe specific lessons to developing countries. In particular, it appears that no specific “Chinese model” of law and development is promoted in Chinese foreign development assistance. This is partly a political strategy. Chinese development experts and government officials see virtue in remaining ideologically noninvasive in their foreign dealings. However, this Article has also argued that the CCP’s domestic uses of law rest on repressed, largely informal knowledge about the desired relationship between the legal system and the Communist Party. This approach lends itself poorly to exportation, even if there was demand for information about Chinese-style authoritarianism. Still, the very experience of encountering a tentative and incoherent legal discourse in the material grandeur of Beijing and Shanghai sends a clear message about the relative unimportance of law for development.