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Legal Reform and the Chongqing Effect: Two Steps Forward One Step Back?

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**LEGAL REFORM AND THE CHONGQING
EFFECT:**

TWO STEPS FORWARD, ONE STEP BACK?

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ACKNOWLEDGMENTS: For Tuki Grivner, for all the hours of joy she has given me.

TABLE OF CONTENTS

I. INTRODUCTION.....	91
A. OVERVIEW OF THE CHONGQING ECONOMIC MODEL	92
II. THE CHINESE LEGAL SYSTEM IN PERSPECTIVE.....	93
III. THE MAKING OF A PRINCELING	97
IV. THE CHONGQING MODEL.....	101
A. CHANG HONG – SING RED	101
B. RED GDP	102
C. DAI HEI – STRIKE BLACK	103
V. FALL OF THE HOUSE OF BO	104
VI. ONE PERSECUTION TOO FAR.....	105
VII. PAYING THE PRICE FOR THE NEXT GENERATION	107
VIII. CONCLUSION: IS IT “MORNING IN CHINA?”	112

LEGAL REFORM AND THE CHONGQING EFFECT:

TWO STEPS FORWARD, ONE STEP BACK?

Veronica Pastor

One step forward and two steps back
Nobody gets too far like that
One step forward and two steps back
This kind of dance can never last

Desert Rose, One Step Forward and Two Steps Back

I. INTRODUCTION

For those steeped in the Western legal tradition, the Chinese political and legal system is, in the famous words of Winston Churchill, a riddle wrapped in a mystery inside an enigma.¹ Of course, Churchill was describing the potential actions of Russia, not China.² But, to continue borrowing from Churchill, perhaps there is a key – Chinese national interest and the interest of the Chinese Communist Party.³ This research explores the interaction between political, economic, and legal reform, and posits that the Chongqing incident⁴ was ultimately a positive turning point in the country's institutional development. The theory presented herein is that although some argue the manner in which the Bo Xilai trial⁵ was conducted, and its aftermath, represents a step back in political aperture, it is actually an example

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1. Winston Churchill, *The Russian Enigma*, BBC (Oct. 1, 1939), available at <http://www.churchill-society-london.org.uk/RusnEnig.html>.
 2. *Id.*
 3. *Id.*
 4. The Chongqing incident refers to the emergence of an alternative economic model under an outdated authoritarian Maoist political model that culminated in the spectacular trial and conviction of its unorthodox proponent, Bo Xilai. François Godement, *China at the Crossroads*, EUROPEAN COUNCIL ON FOREIGN RELATIONS 4 (2012), http://www.ecfr.eu/page/-/ECFR53_CHINA_ESSAY_AW.pdf.
 5. *Bo Xilai's Trial: Going Down Fighting*, THE ECONOMIST (Aug. 31, 2013), <http://www.economist.com/news/china/21584367-china-has-been-gripped-extraordinary-courtroom-drama-going-down-fighting>.

of the “two steps forward, one step back”⁶ so closely associated with Communist political regimes in transition, and holds promise for consolidation of institutional reform in China. In exploring the riddle, this article attempts to place the Chinese legal system in its historic context before moving to the inextricable relationship between law and politics in China. Finally, it is argued that the Bo Xilai prosecution, while undeniably politically motivated and rife with retrograde elements, was also a cautious but definitive move towards the triumph of a new model of consolidated institutionalization.

A. Overview of the Chongqing Economic Model

A discussion of the Chongqing economic model is beyond the scope of this paper, but it is important to understand its key elements. Until the arrival of Bo Xilai, Chongqing was an economic backwater.⁷ Chongqing is barely on the right side of the Aihui-Tengchong line that divides the country between the arid mountains and the fertile plains,⁸ and one of the “four furnaces” of China.⁹ In 1997, the Chongqing municipality was separated from the Sichuan Province,¹⁰ and became a province-level municipality.¹¹ Perhaps due to its historical significance as the capital of China during the Second World War, in 2000 Chongqing was made the linchpin of the central government’s “Go West” program to develop the economically-lagging western half of the country.¹² Bo Xilai arrived there at the end of

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6. George Walden at CBYA Oxford, CBYA (Apr. 26, 2012), <http://www.cbya.org.uk/news/2012/04/26/george-walden-at-cbya-oxford/>.
 7. Kevin Lu, *The Chongqing Model Worked*, FOREIGN POL’Y (Aug. 8, 2012), <http://foreignpolicy.com/2012/08/08/the-chongqing-model-worked/>.
 8. BARRY NAUGHTON, *THE CHINESE ECONOMY: TRADITIONS AND GROWTH* 20-21 (MIT Press ed., 2007).
 9. *Id.* at 20 (Referring to the long, hot summers and the other three “furnaces” of Wuhan, Changsha and Nanjing).
 10. *Id.* at 22.
 11. This is the highest political-administrative classification in China. The mayor and the Secretary of the Communist Party – the highest authority in a province-level municipality—report directly to the central government in Beijing. The other province-level municipalities are Beijing, Shanghai, and Guangzhou. There are 34 administrative divisions in China: 4 province-level municipalities, 22 provinces, 5 autonomous regions, 2 Special Administrative Regions (Hong Kong and Macau) and the claimed Taiwan province. *Administrative Division System*, CHINA THROUGH A LENS, <http://www.china.org.cn/english/feature/38436.htm>.
 12. Lu, *supra* note 7.

2007, and immediately got to work in effecting an astounding economic transformation aimed at assuring his place in the political pantheon.¹³ Within 5 years, as a result of Bo Xilai's unorthodox policies, including the "smash black" campaign¹⁴ to wipe out organized crime, the "sing red" campaign¹⁵ to revive traditional communist-nationalist fervor, and a focus on use of state resources to stimulate economic growth and collective consumption, Chongqing's GDP was growing at an average of 15.8% annually compared to 10.5% for all of China.¹⁶ The economic gap between Chongqing and the other three municipal provinces was all but closed.¹⁷ The way in which Bo Xilai's economic success resulted in his political downfall is intimately tied with the nature of the Chinese political and legal system.

II. THE CHINESE LEGAL SYSTEM IN PERSPECTIVE

Communist ideology everywhere views traditional legal systems as a means by which the ruling classes and the bourgeoisie oppress the peasants and the proletariat.¹⁸ In China, the Confucian tradition also operated as an informal but effective legal system.¹⁹ Moreover, Mao Zedong's ideology of permanent revolution as a means for progress towards true Communism negated the existence of a formal legal system, as one of the very purposes of an institutionalized legal system is to provide continuity and predictability – the antithesis of revolution.²⁰ Upon seizing power, Mao's Communist party abolished all laws promulgated by its predecessor, the Kuomintang, and set out to replace them with a new system.²¹ The evolution of the Chinese legal system from that date to the present can be best understood by reference to the tension between the "societal" and the "jural" models.²²

13. Bob Davis, *In Chinese Politics, a Fall-and a Rise*, WALL ST. J. (July 28, 2012), <http://www.wsj.com/articles/SB10001424052702303933704577531623651645112>.

14. Lu, *supra* note 7.

15. *Id.*

16. *Id.*

17. *Id.*

18. JUNE TEUFEL DREYER, *CHINA'S POLITICAL SYSTEM: MODERNIZATION AND TRADITION* 179 (Pearson Education, Inc., 8th ed. 2012).

19. *Id.* at 180.

20. *Id.* at 85.

21. *Id.* at 179.

22. *Id.* at 180.

The societal model focuses on informal, largely unwritten forms of conduct and values administered ad hoc.²³ At the other extreme, the jural model represents the “rule of law,” and it centers on a codified body of law administered predictably by an organized and independent judiciary.²⁴ However, it is important to remember that a key feature of Western justice systems, the separation of powers, has never existed in the Chinese tradition. Dreyer identifies five distinct stages in this struggle, coinciding with the country’s dominant political faction at the time.²⁵

The first stage (1949-1953) follows the establishment of the People’s Republic of China, when the Communist government abolished all previous laws and sought to create a new system under the Common Program of the Chinese People’s Political Consultative Conference (CPPCC).²⁶ The system included a procuracy, an office in charge of ensuring that proper legal procedure is followed in prosecutions.²⁷ In this first stage, more often than not, this new Soviet-inspired legality was honored in the breach.²⁸ The second stage (1954-1957) began with the promulgation of China’s first state constitution in 1954, and represents the first true incursion of the jural model.²⁹ The new constitution established a formal judiciary in addition to the procuracy, both under the newly created National People’s Congress (NPC).³⁰ The first law schools were opened and law emerged as a budding profession.³¹ However, although the constitution guaranteed equality before the law, in practice, designated class enemies and reactionaries had no constitutional rights.³² Nonetheless, towards the end of the 1954-1957 period, the need for a more predictable and consistent legal system began to be recognized as neces-

23. *Id.* at 180-81.

24. *Id.* at 180.

25. *Id.* at 179-203.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*; *see also*, CONSTITUTION OF THE PEOPLE’S REPUBLIC OF CHINA, Sept. 20, 1954 (China).

30. DREYER, *supra* note 18.

31. *Id.*

32. *Id.*; *see also*, CONSTITUTION OF THE PEOPLE’S REPUBLIC OF CHINA, Sept. 20, 1954 (China).

sary to consolidate the economic gains of Communism.³³ Here, legal history began to take the first of two steps back.

In 1957, Mao announced the “Hundred Flowers” movement, inviting all to offer constructive criticism of the system.³⁴ Lawyers stepped forward to point out the arbitrariness of the legal system’s application and as a result, they and the reforms were crushed as counterrevolutionary in a resurgence of the societal model (1957-1965).³⁵ Just as it is always darkest before the dawn, the worst was yet to come.

In 1966, Mao announced the beginning of the Cultural Revolution, and declared that one of its aims was the destruction of all formal laws and their replacement by party policy.³⁶ Mao’s Red Guards were instructed to destroy all remnants of a judiciary, and the People’s Daily published an article titled “In Praise of Lawlessness.”³⁷ During the widespread persecutions that followed, prosecutors were self-appointed and prosecutions were based on denunciations rather than facts.³⁸ It is significant to point out that Bo Xilai’s father, Bo Yibo, was one of the many victims of the purges, and that Xilai grew up during this era and himself spent five years in a re-education camp.³⁹ In 1975, a new constitution was passed, the procuracy was formally abolished, the courts placed under the state’s security organs, and mass counterrevolutionary trials were allowed.⁴⁰ The judiciary essentially disappeared, and disputes were resolved by political means.⁴¹

The death of Chairman Mao therefore occurred at a time where the legal system could only be described as a chaotic vacuum.⁴² When Deng Xiaoping took over, he faced the daunting task of building a new society that could bring prosperity to the people, while

33. DREYER, *supra* note 18.

34. *Id.*

35. They were accused of ignoring the political struggle and the class struggle implications of law by insisting on “ridiculous” notions of equality before the law, legal representation of the accused and reliance on facts as the basis for trials. *Id.* at 183.

36. *Id.* at 179.

37. *Id.* at 184.

38. *Id.*

39. *Id.*

40. *Id.*; *see also*, Constitution of the People’s Republic of China, Jan. 17, 1975 (China).

41. Dreyer, *supra* note 18.

42. *Id.*

promoting stability and preserving national reconciliation and national unity, all without an institutional framework.⁴³

Deng recognized the need to create a legal system that provided predictability and stability both for individuals and for economic activity. The new constitution adopted in 1978 brought back many of the jural model elements of the 1954 constitution, including the return of the procuracy and legal process rights.⁴⁴ However, it is important to keep in mind that a 1982 amendment defined China's political regime as a "people's democratic dictatorship"⁴⁵—that is, no longer a "dictatorship of the proletariat," but certainly not a "constitutional democracy" either. There is an inherent contradiction between the words "democratic" and "dictatorship," as the two are mutually exclusive.

To an outside observer, this sort of double-speak may seem like gobbledygook.⁴⁶ To an astute China observer, however, this may represent a clear indication of progress in the midst of a great tension between Party factions that believe liberalization is the way to sustainable economic and social progress, and those who fear that too much change too soon may result in rapid descent into social chaos in a country where the deep wounds of the Cultural Revolution have not had time to heal. The post-1982 years, then, can be seen as the playground in which China's transition to a jural model, Chinese-style was effected. Why, then, do we expect China to conform to Western models, much less immediately? Party leaders have repeatedly made clear that the Western model of legal liberalization is not applicable to China.⁴⁷ The most salient example is the leaders' repeated declaration that the doctrine of separation of powers, so cherished in the West, is seen as bourgeois and unsuitable for China, because to have independence between the branches of government is to invite confu-

43. *Id.*

44. Constitution of the People's Republic of China, Mar. 5, 1978 (China).

45. Xianfa [Constitution] Dec. 4, 1982 (China), *available at* https://www.constituteproject.org/constitution/China_2004.pdf (amendments reflected in 1982 Constitution).

46. One of the great Confucian values is "right speak". In popular terms, this means that saying the right words, rather than focusing in what those words actually mean, is paramount. *Id.*

47. Suisheng Zhao, Political Liberalization without Democratization: Pan Wei's proposal for political reform, 12 J. CONTEMP. CHINA 333 (2003).

sion and chaos.⁴⁸ Thus, according to Dreyer, China seems to be moving towards a society under the rule *by* law, rather than the rule *of* law.⁴⁹ For example, court officials in China may deny the release of certain information, and individual rights are subordinate to public policy.⁵⁰

To critics that argue a strict rule of law model is the only acceptable way to organize a market-oriented economy, a Chinese realist may reply that the economic data of the past few years fails to support the assertion that the model is universally desirable. Moreover, the liberal democracy model of the West has become significantly discredited as a vessel for delivering economic growth and raising living standards to the populace as a result of the Great Recession and its aftermath. Only if we stop gauging Chinese actions and developments by purely Western standards, and place them in their proper historic and social context, can we understand the Chongqing incident and its consequences, such as an apparent hardening of repression, as a movement towards China's integration into the community of jural nations, but under its own terms.

III. THE MAKING OF A PRINCELING

By all accounts, except his own, Bo Xilai wanted to be Premier.⁵¹ There is also no doubt that, as a card-carrying member of the Crown Prince Party, his ambition was within the realm of reason.⁵² However, since there are no elections in China, there is no legitimate way to run for the post. Bo had to resort to an obscure combination of merit, popularity and political capital. Because there is no formal legal structure within which to rise politically in China, he was faced with both the necessity and the latitude to employ unorthodox meth-

48. Chaos is anathema to the Chinese leadership and indeed to the Chinese people. One of the main reasons for wide support of Communist policies among the populace in 1949 was that the Communist Party was seen as introducing order after fifty years of war and chaos. DREYER, *supra* note 18, at 188.

49. *Id.* at 202.

50. *Id.* at 187.

51. Bo Xilai Told Trial He had Orders from the Top to Deal with Chongqing Police Chief, SOUTH CHINA MORNING POST (last updated Sept. 1, 2013 8:01am), <http://www.scmp.com/news/china/article/1300981/bo-xilai-told-trial-he-had-orders-top-deal-chongqing-police-chief>.

52. Dreyer, *supra* note 18 (the Crown Prince Party are the descendants of prominent and influential senior communist officials).

ods to do so. By all accounts, except his own, Xi Jinping also wanted to be Premier.⁵³ In 2007 Xi went to Shanghai and Bo went to Chongqing.⁵⁴ By 2012, Xi was Premier, and Bo was on trial for corruption.⁵⁵ Why did Bo fail where Xi succeeded?

There is no doubt that Bo Xilai is an exceptional person; tall, handsome, photogenic, charismatic, and fluent in English, Bo is also trained in international history and is media-savvy.⁵⁶ But to understand Bo's sense of destiny and entitlement, his success, his unorthodox methods and ruthlessness, and his ultimate downfall, it is essential to understand his background. For there is no doubt that Bo Xilai is also ruthless and callous.

Bo Xilai's father, Bo Yibo, had impeccable revolutionary credentials.⁵⁷ He was a veteran of the Long March and a member of the Eight Immortals⁵⁸ who eventually steered the country from the Maoist catastrophe to success through market reform after Mao's death. The Eight Immortals, headed by Deng Xiaoping, believed in the necessity of market reforms but saw no place for political liberalization.⁵⁹ Bo Yibo was the first Minister of Finance of the People's Re-

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53. Tania Branigan, *The Guardian Profile, Xi Jinping*, GUARDIAN, Feb. 13, 2012, <http://www.theguardian.com/world/2012/feb/13/xi-jinping-profile-china> (when asked by a reporter during a 2012 foreign tour whether he thought he was going to be Premier, Xi replied "are you trying to give me a fright?").
54. Alice Miller, *The Bo Xilai Affair in Central Leadership Politics*, 38 CHINA LEADERSHIP MONITOR 1, 4, 8, <http://media.hoover.org/sites/default/files/documents/CLM38AM.pdf>.
55. *Profile: Bo Xilai*, BBC (last updated Sept. 21, 2013, 11:13pm), <http://www.bbc.com/news/world-asia-china-19709555>.
56. Bo Xilai studied international history at Peking University for two years and then shifted to journalism at the Chinese Academy of Social Sciences. JOHN GARNAUT, *THE RISE AND FALL OF THE HOUSE OF BO* 29 (Penguin Specials 2012).
57. Bo Yibo was born to a poor peasant family in Shanshi. His earliest memory is said to be of his mother giving birth to his younger brother and then drowning him because the family did not have enough to eat. During the Civil War, he spent five years in a Kuomintang prison before setting up the Shanshi Suicide Squad to fight the Japanese using guerrilla tactics during World War II and luring Yan Xishan, a local warlord, into the Red Army with his 200,000 men. GARNAUT, *supra* note 56, at 13.
58. *Bo Yibo*, ENCYC. BRITANNICA, <http://www.global.britannica.com/EBchecked/topic/1338315/Bo-Yibo>. The other seven are Deng Xiaoping, Chen Yun, Li Xiannian, Peng Zhen, Yang Zhangkun, Wang Zhen and Song Rengqiong.
59. As such, Bo Yibo participated in the purge of Hu Yaobang, who advocated for political liberalization, and he supported the repression against the June 4 protesters. Joseph

public of China, and Vice Premier under Zhou Enlai.⁶⁰ Xilai and his sibling grew up in the Zhongnanhai military compound for members of the elite, right next to the Forbidden City, and attended the Number 4 Middle School for children of the elite.⁶¹ When the Cultural Revolution broke out, Bo Xilai eagerly joined the Red Guards, and with other Crown Princes, formed a group called United Action (*lian dong*).⁶² However, the older Bo and his contemporaries paid a tremendous personal price for their position and convictions. Bo Yibo was purged as a “capitalist roader” because he advocated for trade with the West.⁶³ He and his wife, Xilai’s mother Hu Ming, were persecuted.⁶⁴ Bo Yibo himself was tortured and imprisoned, and Hu Ming was beaten to death.⁶⁵ It is a well-documented fact that Xilai actively participated in the persecution of his own father. However, reports differ as to whether he participated in torturing and beating Bo Yibo.⁶⁶

In the end, Xilai’s revolutionary fervor and ruthlessness did not save him from the madness of the Cultural Revolution. All the Bo siblings were imprisoned.⁶⁷ Xilai was sent to the infamous Camp 789 for five years, a reeducation camp for princelings where inmates reportedly endured starvation, beatings, sleep deprivation and general filthy conditions.⁶⁸

Kahn, *Bo Yibo, Leader Who Helped Reshape Chinese Economy, Dies at 98*, N.Y. TIMES, Jan. 17, 2007, <http://www.nytimes.com/2007/01/17/world/asia/17bo.html>

60. *Id.*

61. Chris Buckley, *Insight: Children of Mao’s wrath vie for power in China*, REUTERS (Jun. 22, 2012, 7:14am), <http://www.reuters.com/article/2012/06/22/us-china-politics-bo-idUSBRE85L04E20120622>.

62. PEH SHING HUEI, *WHEN THE PARTY ENDS, CHINA’S LEAPS AND STUMBLES AFTER THE BEIJING OLYMPICS 196* (Straight Times Press 2014).

63. John Garnaut, *The Rock Star of Chinese Politics*, SYDNEY MORNING HERALD, Oct. 25, 2012, <http://www.smh.com.au/world/the-rock-star-of-chinese-politics-20121025-287sf.html>.

64. Kahn, *supra* note 59.

65. Reports differ as to whether she was beaten to death or committed suicide. Officially she committed suicide out of shame. Jamil Anderlini, *Bo Xilai: power, death and politics*, FT MAG. (July 20, 2012, 7:08 PM), <http://www.ft.com/intl/cms/s/2/d67b90f0-d140-11e1-8957-00144feabdc0.html#axzz3UwyiWHwh>.

66. GARNAUT, *supra* note 56, at 39 (author says no); HUEI, *supra* note 62, at 196.

67. Kahn, *supra* note 59.

68. GARNAUT, *supra* note 56, at 26.

Those who, like Bo Yibo and the rest of the Eight Immortals, were later rehabilitated, wielded very substantial influence for the rest of their lives and beyond. After Mao's death and his own rehabilitation, Bo Yibo returned to his old post as Vice Premier under Deng Xiaoping to help Deng achieve market reforms.⁶⁹ Putting all rancor aside, the older Bo was instrumental in the stellar ascent of his son. In 2006, Bo Xilai was wielding a campaign to become Vice Premier, after having been Mayor of Dalian for two decades and Minister of Commerce.⁷⁰ In both posts, Xilai proved to be exceptionally successful, and very popular and personable on his own merits. However, in January 2007 Bo Yibo died, and Bo Xilai lost his campaign to become Vice Premier.⁷¹ Because of his status as a princeling and the still-strong support of his family's network, he was made a member of the Politburo.⁷² Unfortunately for him, Xilai did not get along particularly well with princelings of the fourth generation, such as Wen Jiabao and Hu Jintao, or with his peers, including fifth generation Xi Jinping.⁷³ Viewed as too flamboyant and having lost his best supporter, Xilai was "exiled" to Chongqing, 1500 kilometers away from Beijing, as General Secretary of the Communist Party.⁷⁴ There Xilai set to replicate his successes as Mayor of Dalian,⁷⁵ Governor of Liaoning and Minister of Commerce on a grander scale with his usual unorthodox methods, becoming both adored and reviled in equal measure in the process.⁷⁶ However, he could no longer count on his father's *guanxi* to protect him, and the Chinese political culture is not fond of

69. *Id.* at 11.

70. *Id.* at 45.

71. *Id.*

72. *Id.* at 46. Politburo is the main group of people in a Communist government who make decisions about policy. *Politburo*, MERRIAM WEBSTER, <http://www.merriam-webster.com/dictionary/politburo>.

73. GARNAUT, *supra* note 56, at 46.

74. *Id.*

75. With his media training, Bo was very successful in raising the international profile of Dalian with his "three treasures": football, fashion shows and greenery. He ordered the Dalian football team, Dalian Shide, to win the national cup, and became known as the "football mayor". He put Dalian on the international map by turning the Dalian International Fashion Festival into a gala on a global scale, and he went on a huge tree and grass planting campaign to emulate Singapore. HUEI, *supra* note 62 at 197.

76. *Id.*

attention-grabbing excesses.⁷⁷ The stage was set for a bang of epic proportions.

IV. THE CHONGQING MODEL

With a population of over thirty-three million people, Chongqing is the largest city in the world.⁷⁸ This simple statistic, however, hides a much more complex truth, for, as discussed earlier, Chongqing is a province-level municipality. Seventy percent of Chongqing's inhabitants are in fact rural, and widely spread across the Yangtze Valley.⁷⁹ This demographic circumstance helps explain the populist appeal of Bo's policies. After taking a year to observe the realities of Chongqing, Bo set to work.⁸⁰ He decided to appeal to the masses that had benefitted from the glory days of the Cultural Revolution and were now feeling left behind.⁸¹ Bo identified three popular issues: crime, economic inequality and lack of opportunity, and general disillusionment.⁸² The largely rural populations, including rural to urban migrant "floating populations" and the masses of urban populations, increasingly found themselves on the losing end of economic reform, and were beginning to long for the good old days.⁸³ Bo Xilai introduced a four-pronged program to make Chongqing a model of Chinese success: (i) sing red, (ii) red GDP, (iii) go green and (iv) "strike black."⁸⁴

A. Chang Hong – Sing Red

"Sing red" was a campaign in the tradition of the heyday of Maoist China.⁸⁵ It identified an enemy, "the bourgeoisie," without

77. A GARNAUT, *supra* note 56, at 47 ("Guanxi – the ubiquitous term for relationships involving reciprocal obligations. ").

78. *Id.* at 48.

79. *Id.*

80. *Id.*

81. *Id.* at 49.

82. *Id.*

83. *Id.* at 51 ("Floating populations .refers to the large and increasing number of migrants without local household registration status."); Zai Liang & Zhongdong Ma, *China's Floating Population: New Evidence from the 2000 Census*, 30(3) POPULATION & DEV. REV. 467, 467 (Sept. 30, 2004), http://www.albany.edu/imc/Liang_Ma_PDR_2004.pdf.

84. GARNAUT, *supra* note 56, at 49-51.

85. *Id.* at 49.

really explaining who exactly that enemy was, or why it was responsible for the current state of affairs.⁸⁶ Sensing the mood of the economic losers and their need for the comforts of the past, Bo covered the city with slogans redolent of the Mao years, such as “the Communist Party is like the sun, there is brightness wherever it shines.”⁸⁷ Bo banned commercial advertising on the municipal television channel, replacing it with political propaganda and slogans, and also insisted on having personal editorial control of the news.⁸⁸ On top of that, he introduced a mild version of the reeducation campaigns of the Cultural Revolution, by sending 200,000 officials to the countryside to “learn from the peasants.”⁸⁹

B. Red GDP

But Bo combined his slogan-laden nostalgia with a real program to improve the lives of the economic losers. Although at the time the country was ambivalent about foreign investment, Bo used his personal charm and economic incentives to attract global companies that would open manufacturing facilities to provide jobs.⁹⁰ Thus, at a time when the gap between the rich and the poor was widening across China, Bo managed to directly improve people’s day-to-day lives by connecting Chongqing to the global economy. Hewlett-Packard, Ford, Samsung, Foxcon and many others opened factories there, and Bo ordered the construction of millions of affordable housing units for the workers.⁹¹ Chongqing shot to the top of the Chinese GDP growth tables. At the same time, to placate critics, Bo launched a “go green” campaign to make Chongqing a livable city in the model of Singapore.⁹²

86. *Id.*

87. *Id.*; Tom Orlick & Melissa Powers, *You Can’t Have a Party Without Music: A Red Song Primer*, WALL ST. J.: CHINA REALTIME (June 30, 2011), <http://blogs.wsj.com/chinarealtime/2011/06/30/you-cant-have-a-party-without-music-a-red-song-primer/>.

88. GARNAUT, *supra* note 56, at 49.

89. *Id.* at 49-50.

90. *Id.* at 50.

91. *Id.*

92. *Id.* at 50-51.

C. Dai Hei – Strike Black

Finally, the “strike black” campaign aimed to eliminate organized crime and corruption, and provide citizens with a sense of personal security.⁹³ In order to accomplish his goal, Bo brought with him a former chief of police from his days as Governor of Liaoning, Wang Lijun, making him police chief and vice mayor.⁹⁴ It was the extremes of Bo’s methods in combatting crime that were the catalyst for his ultimate downfall.

Before Bo’s arrival, Chongqing had an international reputation as a center of corruption, prostitution, and criminal activity. Bo’s efforts to clean up the city were initially met with support from the top leadership in Beijing, to the point that some voices across the world called for the model to be replicated nationwide, and even internationally.⁹⁵ Between 2009 and 2011, it is estimated that over 5,500 people were arrested, and the citizens of Chongqing felt safe for the first time in many years.⁹⁶ However, not all of the people arrested were criminals.⁹⁷ Some were merely businessmen who had become too successful and did not wish to cooperate with Bo’s social projects, or lawyers, judges or political opponents who objected to Bo’s methods.⁹⁸ According to the Wall Street Journal’s Stanley Lubman, the “strike black” campaign “involved misuse of both the courts and the police.”⁹⁹ Others have stated that lawyers for defendants were intimidated, torture was used to extract confessions, and an estimated 1,000 people were sent to labor camps.¹⁰⁰

Regardless of the ultimate historical judgment, it is clear that Bo Xilai succeeded in creating a new model and promoting it as well. In his mind, Bo was building the “Harmonious Society” touted by Hu

93. Stanley Lubman, *Bo Xilai’s Gift to Chongqing: A Legal Mess*, WALL ST. J.: CHINA REALTIME (Apr. 12, 2012, 11:32 AM), <http://blogs.wsj.com/chinarealtime/2012/04/12/bo-xilais-gift-to-chongqing-a-legal-mess/>.

94. GARNAUT, *supra* note 56, at 53.

95. *Id.* at 51, 53.

96. Lubman, *supra* note 93.

97. Keith Richburg, *After Bo’s Fall, Chongqing Victims Seek Justice*, WASH. POST, Apr. 19, 2012, http://www.washingtonpost.com/after-bos-fall-chongqing-victims-seek-justice/2012/04/19/gIQAxBzGUT_story.html.

98. GARNAUT, *supra* note 56, at 56-57.

99. Lubman, *supra* note 93.

100. Richburg, *supra* note 97.

Jintao,¹⁰¹ albeit through some of the unconventional methods of “permanent revolution” touted by Mao,¹⁰² and all was well... for a while. Bo became “the pin-up boy for the new left, the old left, the Maoist left and, it appeared, anyone who was attracted to the allure of shiny rising power.”¹⁰³ According to Professor Cui Zhiyuan of Xinhua University, and a leader of the New Left Movement, Bo’s Chongqing model became “a new economic pattern that transcends left and right.”¹⁰⁴ Before having to admit he was on the payroll of the Chongqing government, Cui declared, “Chongqing is an experiment to promote more political democracy for the common people.”¹⁰⁵ Yang Fan, a professor of Economics at China University of Political Science and Law, founded the Internet site Utopia, to defend Bo’s policies and lauded the reforms in a book he co-authored, *The Chongqing Model*.¹⁰⁶ One of Xi Jinping’s first moves after being appointed successor to Hu Jintao in 2010, was to travel to Chongqing to tell Bo that his singing red campaign “had gone deeply into the hearts of the people and was worthy of praise.”¹⁰⁷ Even Henry Kissinger said in a 2011 sing red meeting, “I saw the vision for the future,” and he declared himself to be “shaken by the vitality of the city.”¹⁰⁸ Kissinger could not have known that by 2011 the tide was already turning within the enigma, and that the riddle of Bo’s rise would soon unwind because of a murder mystery.

V. FALL OF THE HOUSE OF BO

Two legal developments would bring down the Bo house of cards. The first development was the ill-advised persecution of Li Zhuang,¹⁰⁹ a well-regarded lawyer with important connections in Bei-

101. GARNAUT, *supra* note 56, at 51.

102. *Id.* at 49-50.

103. GARNAUT, *supra* note 56, at 63.

104. *Id.*; John Garnaut, *Show Them the Money, Old China*, THE SYDNEY MORNING HERALD, Mar. 16, 2011, <http://www.smh.com.au/business/show-them-the-money-old-china-20110325-1ca3f.html>.

105. GARNAUT, *supra* note 56, at 63; Garnaut, *supra* note 104.

106. GARNAUT, *supra* note 56, at 65-66; YANG FAN, SU WEI, & LIU SHIWEN, CHONGQING MODEL, (China Economic Publishing House, 2011).

107. GARNAUT, *supra* note 56, at 64.

108. *Id.*

109. *Id.* at 66.

jing, and the second was the operatic murder of businessman Neil Heywood by Bo's wife Gu Kailai, also a lawyer.¹¹⁰ By early 2011, even Professor Yang was calling Bo's stewardship into question, saying "His program should include democracy, rule of law, market economics, but now it is too close to the Old Left and New Left and the Cultural Revolution [...] Bo's problems in Chongqing will be exposed and it will turn to chaos."¹¹¹ The Bo house of cards was about to fall, and the story and its outcome would play an important role in the future of China.

VI. ONE PERSECUTION TOO FAR¹¹²

Li Zhuang is a well-known and respected lawyer in private practice. When Bo sought to prosecute Wen Qiang, Wang Lijun's predecessor, Li Zhuang considered defending him.¹¹³ Although he ultimately declined to take Wen's case, he did defend Gong Guangmo, who was brought to trial on corruption charges and falsely accused of being part of the Chongqing mafia, the core target of the strike black campaign.¹¹⁴ Gong initially confessed, but on Li's advice later recanted his confession claiming it was extracted under torture.¹¹⁵ Recanting confessions in a public forum was an unusual practice, and shocking to those who, like Bo, had grown up politically under the specter of the Cultural Revolution -- when the Party was always right, people falsely confessed to the most absurd crimes and stood steadfastly by their confessions. Bo and Wang arranged to ab-

110. *Id.* at 97.

111. *Id.* at 66.

112. I purposefully use the word "persecution" here rather than "prosecution", as a "prosecution is a legally and legitimate persecution under due process of law. That was not the case here.

113. GARNAUT, *supra* note 56, at 67.

114. Gong Guangmo was accused of trying to bribe Wen Qiang, not an unusual practice in Chinese politics in general or in Chongqing in particular. He did not, however, have any connection to the organized mafia-like networks that the Strike Black campaign sought to eradicate. *Id.* at 67.

115. "Twice he tried to kill himself by hitting his head against the wall, and then he tried to bit off his own tongue." Guards severed his partially cut-off tongue, but did not allow him to receive any medical attention for two days, according to lawyer Zhu Mingyong. *Id.* at 67-68 (citing Elizabeth M. Lynch, *China's First Test of the New Exclusionary Rules – A Dog Without a Bite*, CHINA LAW AND POLICY (Sept. 30, 2010), <http://chinalawandpolicy.com/2010/09/30/china%E2%80%99s-first-test-of-the-new-exclusionary-rules-%E2%80%93-a-dog-without-a-bite/>).

duct Li from Beijing and bring him back to Chongqing for trial on charges of coaching Gong to give false testimony.¹¹⁶ Of course, Li initially confessed, only to recant at the trial by exclaiming “My confession is fake!”¹¹⁷ Bo then brought additional fabricated charges against Li.¹¹⁸

This time, however, Bo was up against a truly formidable adversary. Li’s own lawyer, his colleague Chen Youxi, promptly spread the news on the Internet and set in motion a lively debate about whether the New Left that Bo represented had swung all the way to become what Xilai’s own father had denounced at the start of the Cultural Revolution: “To be a leftist among the leftists is to be a leftist in quotation marks, which is also to be a rightist.”¹¹⁹ With Li’s persecution, Bo had unknowingly turned Chongqing and his work into a proxy for serious debate regarding China’s political future and his own legitimacy. This debate and the ideological chaos it threatened to create, brought about an opportunity for liberal lawyers, led by Chen, to expose and denounce via Internet campaigns the illegal, strong-arm tactics employed by Bo, which constituted the dark underbelly of the success of the Chongqing model.

But the abuse against one of their own also forced those lawyers, who had up until then acted with moderation, to become unusually politically aggressive and resourceful in order to obtain Li’s exoneration and freedom.¹²⁰ Chen also sent the Li dossier to powerful people in Beijing.¹²¹ He and his boss, Fu Yang, framed the Li/Bo issue in terms of the competing models it represented: a return to the lawlessness and madness of the Cultural Revolution (Bo and the societal model of law) versus an advance towards rule of law and democratization (Li and the jural model of law).¹²² Unfortunately for Bo, Li Zhuang’s law firm was headed by Fu Yang, a fellow princeling who had been a close friend of Bo Xilai until their political paths diverged as a result of Bo’s adherence to the Cultural Revolution/societal model, while Fu had devoted his professional life to quietly promot-

116. *Id.* at 68.

117. *Id.*

118. *Id.* at 70, 75.

119. *Id.* at 70.

120. *Id.* at 70.

121. *Id.* at 72.

122. *Id.* at 66, 72-73.

ing the rule of law.¹²³ Fu's political credentials are even more impressive than Bo's: the law firm he now heads was founded by Deng Pufang, Deng Xiaoping's son. Additionally, Fu's father, Peng Zhen, was one of the key rebuilders of the Chinese legal system after the Cultural Revolution, and was given the title of "key founder of China's socialist legal system."¹²⁴

Thus, the fight between Bo and Li became a proxy for a generations-old struggle between the old guard Maoist princelings of the Cultural Revolution and the new China of Deng Xiaoping, Hu and Wen, on which the institutional, political, and legal future of China hinged.¹²⁵ Hu and Wen do not come from the princeling caste.¹²⁶ Bo Yibo had led the persecution against Hu and Wen's patron, Hu Yaobang.¹²⁷ Bo Xilai on the other hand, even after his father's death benefitted from the patronage from Jiang Zemin and his family, such that overthrowing Bo and all he had come to stand for was no easy task, even for the powerful Deng-Hu-Wen faction.¹²⁸ Luckily for the pro-law and liberalization Deng-Hu-Wen faction, at the same time as he was persecuting Li, Bo was involved in a sordid tale of murder through his wife, Gu Kailai.¹²⁹ The foreign elements of the Gu tale of intrigue and murder exposed the rot of the Bo administration to international public opinion.

VII. PAYING THE PRICE FOR THE NEXT GENERATION

Mindful of the dangerous instabilities of Chinese politics and society in the past century, and of the irresistible move towards globalization, the Bo-Gus wanted their son, Bo GuaGua, to be a citizen of the world.¹³⁰ Neil Heywood, a public school boy¹³¹ from London, be-

123. Until the Bo Xilai/Li Zhuang affair, Fu Yang had stayed out of direct involvement in politics and kept a relatively low profile. However, the arrest of one of his star lawyers on trumped up charges was too much of an assault on what Fu, his father and his law firm stood for. *Id.* at 73-76.

124. *Id.* at 74-75.

125. *Id.* at 70.

126. *Id.* at 77.

127. *Id.* at 78.

128. *Id.*

129. *Id.* at 82, 97.

130. *Id.* at 41, 44.

131. Heywood went to Harrow. Of course, an English "public school" is what the rest of the world calls an elite "private school." *Id.* at 89.

friended GuaGua and acted as his mentor and conduit to the Western world.¹³² It is also rumored that he and Gu Kailai were lovers, and that Heywood was a spy.¹³³ In any event, for all her talent as a lawyer and her cosmopolitanism,¹³⁴ Gu Kailai was a mentally and emotionally fragile person, and she became convinced that Heywood would harm GuaGua after her relationship with the businessman soured.¹³⁵ In November 2011, Gu poisoned Heywood in a hotel room.¹³⁶ The Chongqing Chief of Police, Wang Lijun, later conspired with her to destroy the evidence by cremating the body and hiding the dossier. He told her to forget all about it, as Heywood was “gone with the wind and passed into eternity.”¹³⁷ Later, at her trial for the murder, Gu declared that she believed Heywood had detained GuaGua and was blackmailing him to obtain \$20 million he believed he was owed as part of a failed business deal.¹³⁸ Others believe that the murder was a crime of passion, perhaps even ordered by Bo himself.¹³⁹ Many who have read her testimony and the court record, including GuaGua, consider Gu’s assertions implausible and evidence of her impaired state of mind.¹⁴⁰

In January 2012, Wang told Bo he thought Bo should cooperate with the Heywood murder investigation and trial. Bo became furious at the suggestion, and fired Wang from his post after calling him dis-

132. *Id.* at 89.

133. *Id.* at 90-91.

134. Gu Kailai was also the daughter of a prominent communist general who was purged during the Cultural Revolution. She studied international relations and law at Peking University and became a very successful lawyer in Dalian as Bo’s career progressed. She went as far as to write a book, *Uphold Justice in America* about her fight to defend the rights of Dalian companies in the United States. HUEI, *supra* note 62, at 239-240.

135. The source of Gu’s mental state of anxiety may have been poisoning. In 2006, Wang Lijun found that some capsules Gu took daily had been laced with mercury, causing possible permanent neurological damage to Gu. GARNAUT, *supra* note 56, at 84, 88, 92.

136. *Id.* at 88, 94-96; See also Keith B. Richburg, *Court Observer: Gu Kailai, Wife of Bo Xilai, Confessed to Murder of Briton in China*, WASH. POST, Aug. 9 2012, http://www.washingtonpost.com/world/gu-kailai-wife-of-bo-xilai-does-not-contest-murder-charge-at-closed-trial-in-china/2012/08/09/24153ebc-e206-11e1-ae7f-d2a13e249eb2_story.html.

137. HUEI, *supra* note 62, at 246.

138. GARNAUT, *supra* note 56, at 93-94.

139. HUEI, *supra* note 62, at 244.

140. GARNAUT, *supra* note 56, at 94.

loyal and slapping him in the face.¹⁴¹ Fearing for his safety, Wang fled to the U.S. consulate in Chengdu, away from Bo's jurisdiction, and the scandal broke out.¹⁴² In the safety of the U.S. consulate, Wang asked for asylum and unraveled the grotesque tale of murder, corruption, money laundering and phone tapping that underlay the Bo Xilai, Chongqing success story.¹⁴³ The Wang defection was of such momentous proportion that the Politbureau took an unusual step, surrounding the U.S. consulate with armored vehicles and threatening diplomats.¹⁴⁴ They dispatched Deputy Mayor Huang Qifan to meet with Wang and convince him to turn himself in.¹⁴⁵ Wang eventually agreed to surrender to the Chinese Ministry of State Security, but insisted on traveling in a crowded commercial plane for fear Bo would murder him by causing an accident, as allegedly happened to Lin Biao in 1971.¹⁴⁶ Officially, the Chongqing authorities declared that Wang was suffering from "long term overwork" and was therefore going for "vacation-style treatment."¹⁴⁷

Perhaps the Chinese nomenclature could have forgiven Bo his excessive zeal. Maybe they could have overlooked some aspects of his alleged business deals, or ignored his methods. However, the Chinese Communist Party hates to be embarrassed, and the Wang Lijun defection was an embarrassment of international proportion.¹⁴⁸ Bo had to go. However, Bo was not without powerful supporters, so the move had to be engineered carefully. The Chinese Communist Party is allergic to any appearance of dissent, which it finds threatening. Indeed, the last serious instance of high-level dissent played out in public was the June 4 incidents in Tiananmen Square, which very nearly brought down the regime.¹⁴⁹ Moreover, many Party leaders were on record praising the Chongqing model, and Bo had not done anything counter to the fundamental ideology of the Party.¹⁵⁰ The

141. GARNAUT, *supra* note 56, at 103-04.

142. *Id.* at 105.

143. *Id.* at 106-107, 109.

144. *Id.* at 108.

145. *Id.* at 109.

146. *Id.* at 110-111.

147. *Id.* at 113.

148. *Id.* at 111, 114.

149. *Id.* at 111-112.

150. *Id.* at 114-115, 121.

process to remove him would have to be careful and gradual, and maintain the semblance of legal due process. A side benefit of this circumstance was that it advanced the jural model.

In March 2012, He Guoqiang, Bo's predecessor in Chongqing, paid a visit to the Chongqing delegation present in Beijing for political meetings, and said "[t]he climate in Chongqing is very different from the climate in Beijing. So I hope that everyone will take care against the cold and stay warm, and be careful to stay healthy."¹⁵¹ It was a clear warning of things to come. In spite of this, Bo further antagonized his superiors and peers by publicly disclosing China's rising Gini coefficient,¹⁵² one of the highest in Asia, and essentially declaring himself the one true heir of Chairman Mao on the strength of his Chongqing model.¹⁵³ The Party's reaction was swift. Wen Jiabao repudiated the Chongqing model, calling it "a renegade kingdom built on a misguided aim of reviving the Cultural Revolution," and adding "without political structural reform ... new problems that have cropped up in China's society will not be fundamentally resolved and such historical tragedies as the Cultural Revolution may happen again."¹⁵⁴ The next day, Bo was removed as Party Secretary of Chongqing.¹⁵⁵ Three weeks of wild rumors of a coup staged by Bo followed, until Bo was removed from the Central Committee of the CCP, and from the Politburo for "serious discipline violations."¹⁵⁶ In September, Bo was expelled from the Party for corruption, womanizing, and abuse of power going all the way back to his Dalian days.¹⁵⁷ He was also accused of being complicit in Heywood's murder.¹⁵⁸

151. HUEI, *supra* note 62, at 227

152. The Gini coefficient measures inequality in a society. A coefficient of 1 represents perfect inequality, and a coefficient of 0 represents perfect equality. At that point, the Chinese government had not released its official Gini coefficient in ten years. *Id.* at 229.

153. At a media event, Bo said "As Chairman Mao said as he was building the nation, the goal of our building a socialist society is to make sure everyone has a job to do and food to eat, that everybody is wealthy together. If only a few people are rich, then we'll slide into capitalism. We've failed. If a new capitalist class is created then we'll really have turned onto a wrong road" *Id.*

154. *Id.* at 230-31.

155. *Id.* at 231.

156. *Id.* at 236, 238.

157. *Id.* at 249.

158. *Id.*

On July 26, 2012, Gu was formally charged with Neil Heywood's murder.¹⁵⁹ On August 20, 2012, she was convicted and sentenced to death.¹⁶⁰ Two weeks later, Wang was sentenced in Chengdu to fifteen years in prison for a long list of crimes including defecation, taking bribes, bending the law for selfish gains, and abuse of power.¹⁶¹ The noose was tightening around Bo Xilai.

Bo Xilai was tried in Jinan in August 2013 in a dramatic five-day trial.¹⁶² For the first time, transcripts of court proceedings were uploaded online on Sina Weibo in real time.¹⁶³ This was an unprecedented move of transparency, reflecting the ideological triumph of the jural model and the perceived need of the ruling faction to observe due process. Ironically, Bo recanted an earlier confession of guilt in bribery, but in closing statements said "I know it is impossible to escape my fate over this. There are times too when I feel weak

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159. Tania Branigan, *Gu Kailai Will Get Fair Trial, Says China*, THE GUARDIAN, July 27, 2012, <http://www.theguardian.com/world/2012/jul/27/gu-kailai-fair-trial-china>.
160. Stan Grant & Steven Jiang, *Court Suspends Death Sentence Following Conviction of Gu Kailai*, CNN, Aug. 20, 2012, <http://www.cnn.com/2012/08/19/world/asia/china-gu-kailai-verdict/>. The sentence was later commuted to life in prison. David Wertime, *New Year's Surprise: Jailed Chinese Pol Bo Xilai 'Physically Okay'*, FOREIGN POLICY, <http://foreignpolicy.com/2015/01/04/bo-xilai-physically-okay-li-wangzhi-social-media-update/>.
161. Tania Branigan, *China Jails Bo Xilai's Former Police Chief Wang Lijun for 15 Years*, THE GUARDIAN, Sept. 24, 2012, <http://www.theguardian.com/world/2012/sep/24/china-police-chief-wang-lijun-jailed>.
162. The charges against Bo Xilai were: (i) Bribery - \$3.6 M from two businessmen, to pay for a villa in the South of France and shopping sprees. Bo claimed he was unaware of the spending (life in prison, range was 10 years to execution, confiscation of property), (ii) Embezzlement - \$800,000 for a confidential building project in Dalian while he was a top official in Dalian, blamed his wife and the official responsible for the project (15 years in prison out of range of 10 years to death, confiscation of 1 million yuan, (iii) Abuse of Power – violated procedures by removing police chief Wang Lijun while mayor of Chongqing because he had informed him his wife was being investigated for the murder of Neil Heywood, admitted "mistakes" but no crimes and said Wang tried to blackmail him and he had higher authority to remove him. *Bo Xilai: The Charges and Penalties*, WALL ST. J., Sept. 22, 2013, <http://blogs.wsj.com/chinarealtime/2013/09/22/bo-xilai-the-charges/>; HUEI, *supra* note 62, at 249.
163. Stanley Lubman, *What the Bo Xilai Trial Means for China's Legal System*, WALL ST. J., Sept. 26, 2013, <http://blogs.wsj.com/chinarealtime/2013/09/26/what-the-bo-trial-means-for-chinas-legal-system/>.

inside.”¹⁶⁴ He was sentenced to life in prison, his personal assets were seized, and he lost all political rights for life.¹⁶⁵

VIII. CONCLUSION: IS IT “MORNING IN CHINA?”¹⁶⁶

The economic and political revolution that came to be known as Reaganomics and neoconservatism was launched with Ronald Reagan’s campaign slogan, “it’s morning in America.”¹⁶⁷ Does the defeat of the Bo Xilai factor represent a similar inflection moment in China? Is it safe to conclude that the ghosts of the Cultural Revolution have once and for all been laid to rest, and that China is moving towards a law-based, rational, predictable institutionalized model that may in its own time deliver increased political participation by ordinary citizens and a move towards a more modern growth-based liberal economy? Numerous economic studies suggest a high positive correlation between political liberalization, economic development and growth measured by GDP per capita,¹⁶⁸ with civil society playing

164. HUEI, *supra* note 62, at 250-51.

165. *Id.* at 250.

166. In his political campaign for re-election in 1984, Ronald Reagan coined the slogan “it’s morning in America” to persuade voters that his policies had been responsible for the end of the economic and identity crisis the United States had suffered under the Carter administration. *Top Ten Campaign Ads – Morning in America*, TIME, http://content.time.com/time/specials/packages/article/0,28804,1842516_1842514_1842575,00.html.

167. William A. Niskanen, *Reagonomics*, LIBR. OF ECON. & LIBERTY (1988), <http://www.econlib.org/library/Enc1/Reagonomics.html>; *Morning in America*, U.S. HISTORY, <http://www.ushistory.org/us/59a.asp>.

168. *Per Capita GDP*, Investopedia, <http://www.investopedia.com/terms/p/per-capita-gdp.asp>. Unlike gross GDP, GDP per capita is a measure of distributive fairness and of inequality. *Id.*

a crucial role in bringing those two elements together.¹⁶⁹ With slowing economic growth and rising popular discontent as manifested by the growing number of “mass incidents,” there is no doubt that China is standing at a crossroads. Change too soon, too fast, and risk a social shock that will be impossible to predict and control. Change too little and too slowly, and face exactly the same danger, as common people see the benefits of growth slip out of their reach while the elite continue to enjoy a wildly Capitalist lifestyle.

Many observers have seen in the Bo Xilai trial and its aftermath – crackdown on political protests, further repression of netizens and activists¹⁷⁰ – a sign of a return to the past. In addition, they point to Document No. 9, a memo by senior party leaders denouncing the Western Constitutional liberal model, with its separation of powers, as unfit for China.¹⁷¹ To believe that that is the end of the story, however, is to ignore the sinewy ways in which politics move in China. For while Document No. 9 is given support, at the same time there is increasing official support for the jural model as necessary to the advancement of China. The fact that the Hu-Wen faction chose law as

169. In *China Experiments: From Local Innovations to National Reform*, the authors present a series of local experiments in civil society and democratization as signs of an increasing move towards liberalization while warning that the story is not yet written as to which of four potential outcomes identified in a 2007 paper by Minxin Pei may come to pass. The four potential outcomes are: authoritarian resilience, collapse, democratic evolution and trapped transition. See, e.g., ANN FLORINI, HAIRONG LAI & YELING TAN, *CHINA EXPERIMENTS: FROM LOCAL INNOVATIONS TO NATIONAL REFORM* 93, 168 (2012). In his paper, *Is China's Transition Trapped and What Should the West do About it?*, Pei argues that trapped transition is the most likely outcome because the interests of the elites now clash with the reforms necessary for further economic growth. However, Pei's paper is 7 years old and much has changed since its publication. Minxin Pei, *Is China's Transition Trapped and What Should the West do About it?*, FOUND. FOR LAW, JUST., & SOC'Y 2-5 (Nov. 16, 2007), <http://www.fljs.org/content/china's-transition-trapped-and-what-should-west-do-about-it>.

170. See, e.g., *Trials Put Nine Chinese Activists in Dock*, THE GUARDIAN, Jan. 21, 2014, <http://www.theguardian.com/world/2014/jan/20/nine-chinese-activists-trials>; Andrew Jacobs & Chris Buckley, *Chinese Activists Test New Leaders and are Crushed*, N.Y. TIMES, Jan. 15, 2014, <http://www.nytimes.com/2014/01/16/world/asia/chinese-activists-test-new-leader-and-are-crushed.html>.

171. Stanley Lubman, *Document No. 9: The Party Attacks Western Democratic Ideals*, WALL ST. J., Aug. 27, 2013, <http://blogs.wsj.com/chinarealtime/2013/08/27/document-no-9-the-party-attacks-western-democratic-ideals/>. Stanley Lubman is a legal scholar and has written extensively on the Chinese legal system. see, e.g., STANLEY LUBMAN, *BIRD IN A CAGE: LEGAL REFORM IN CHINA AFTER MAO* (1990).

a way to bring down its rival faction, led by Bo, is significant. The challenge now is to preserve the economic success brought about by the Jiang Zemin faction, which Bo came to represent, along with the legal and political reforms the Hu-Wen faction, now represented by Xi Jinping, acknowledge as necessary. Li Zhuang himself has declared that, for all the shortcomings of the Bo trial, its unprecedented openness may well be a harbinger of a new judicial system.¹⁷² Additionally, Zhou Qiang, the new head of the Supreme People's Court, has publicly acknowledged the failings of the legal system and cites Xi Jinping as saying, "in every single legal case in China, we should work hard to ensure that the mass of the public feel that they have received fair justice."¹⁷³ However, observers who expect a wholesale migration towards the Western model of "rule of law" and "separation of powers," in even the medium term will likely be disappointed. For China will, as usual, evolve on its own terms, and at its own pace. Moreover, the financial crisis of 2007, as well as the political, economic and social crises that are currently gripping Western societies, mean that the Western political and economic model now lacks the moral authority it once had. The entire world is looking for a third way, and it is fair to say that nobody is in a position to offer an uncontested model. However, looking to the next generation, it is encouraging to see that the heir to the Bo political legacy, Bo GuaGua, is studying law at Columbia University. As the story of China's political and economic evolution continues to be written, there will be many steps forward, and many steps back. What is important is that it keeps moving in the right direction and perhaps teaches the rest of the world some valuable lessons along the way.

172. Jeremy Page & Yang Jie, *Attorney Bo Punished: Trial Performance 'Remarkable'*, WALL ST. J., Aug. 27, 2013, <http://blogs.wsj.com/chinarealtime/2013/08/27attorney-bo-punished-trial-performance-remarkable/>.

173. Stanley Lubman, *What the Bo Xilai Trial Means for China's Legal System*, WALL ST. J., Sept. 26, 2013, <http://blogs.wsj.com/chinarealtime/2013/09/26/what-the-bo-trial-means-for-chinas-legal-system/>.