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CHINA'S RISE, THE U.S., AND THE WTO: PERSPECTIVES FROM INTERNATIONAL RELATIONS THEORY

Jacques deLisle*

What do China's dramatic economic rise, engagement with the World Trade Organization ("WTO") (and other established features of the international economic legal order), and rising assertiveness in external relations tell us about China's past and likely future relationship to status quo international economic legal institutions and the norms they instantiate? What do these developments indicate about prospects for those institutions and norms? In *China's Rise: How it Took on the U.S. at the WTO*, Gregory Shaffer and Henry Gao offer, or point us toward, answers to these questions. They do so on a grander scale than their relatively modest title indicates. In doing so, they engage seriously (if at times implicitly) with international relations theory and provide rich, original empirical support from fieldwork interviews. Their discussion of the relatively recent past—and its legacy—provides grounds for optimism among those who favor an institutionally robust and liberal international economic legal order. Yet, their analysis also finds, or suggests, ample reasons for pessimism in recent behavior and experiences of China and the U.S. in the WTO, and other developments in China, the U.S., and U.S.-China relations.

This response supplements and complements Shaffer and Gao's analysis. The history of China's participation in the WTO, and the largely liberal order of which the WTO is a key element, is ambivalent—perhaps more than can be conveyed in an account that gives center stage to Chinese informants who have favored adherence to international norms and participation in international institutions. The future may be more fraught than can be fully captured in a relatively brief final section of an article that focuses primarily on evaluating the past. This response addresses these issues from perspectives of international relations theories (many of which Shaffer and Gao note) and their application to China's engagement with the WTO and related matters. The sections that follow are arranged, roughly, from least to most pessimistic (except for a final subsection).

I. CONSTRUCTIVISM: AN UNCERTAIN VERDICT ABOUT CONVERGENCE

In the argot of international relations theory, Shaffer and Gao offer a partly (I would say largely) "constructivist" analysis of China's approach to the WTO and the international economic legal regime centered on the WTO.¹ For a constructivist, a state's behavior can be shaped by its socialization into acceptance

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1. See Gregory Shaffer & Henry Gao, *China's Rise: How It Took on the U.S. at the WTO*, 2018 U. ILL. L. REV. 101, 105 n.19.

of international norms, including by means of a state's integration into international institutions.²

At a general level, China's approach to the WTO and related norms is a well-known tale that appears to fit constructivist theory. From the beginning of its Post-Mao Reform Era, China has sought to join the international economy and its major institutions, largely on status quo-accepting terms. "Modernization"—economic development—has been the defining policy goal of the Reform Era. China has pursued economic development through "opening" (to the outside world) and "reform" (at home). "Opening" meant adapting to prevailing international norms and rules for trade and other matters (including transnational investment) as means for attracting foreign capital and know-how—initially concentrated in export-oriented industries that depended on access to foreign markets. "Reform" meant market-oriented changes to domestic policies and institutions and a much more robust, market-supporting legal system. These changes entailed extensive borrowing from, and convergence with, legal rules and norms prevalent in major developed economies and, in turn, reflected in the GATT/WTO and other institutions that had been created by the U.S. and states with similar interests and values.³

As the Reform Era progressed, evidence accumulated to support a constructivist account. China sought ardently to rejoin the GATT (beginning in 1986) and to become a founding member of the WTO (in 1995). When China joined the WTO in 2001, it accepted notably unfavorable terms. The conditions included foregoing special accommodations that had been offered to developing countries and post-socialist transitional economies, and granting trading partners exceptional powers to impose barriers in response to rising Chinese exports. Zhu Rongji, China's redoubtable premier during the run-up to China's accession, had taken significant political risk in offering concessions that sought—and initially failed to achieve—U.S. support of China's WTO candidacy during Clinton's presidency. The reward Zhu sought was a lever—in the form of binding international legal obligations—to advance economic reforms that would bring China more into line with market principles and international norms. Throughout the 1980s and 1990s, China joined the other major institutions of the international economic legal order, almost entirely on status quo-accepting terms. As one prominent assessment by an American scholar put it, China was "playing our game."⁴

2. MARTHA FINNEMORE AND MICHAEL N. BARNETT, *RULES FOR THE WORLD: INTERNATIONAL ORGANIZATIONS IN GLOBAL POLITICS* (2004); Alexander Wendt, *Anarchy Is What States Make of It: The Social Construction of Power Politics*, 46 *INT'L ORG.* 391, 392 (1992). For a constructivist analysis of China's interaction with international law and institutions, see generally ALISATAIR IAIN JOHNSTON, *SOCIAL STATES: CHINA IN INTERNATIONAL INSTITUTIONS, 1980-2000* (2008).

3. GREGORY T. CHIN, *INTERNATIONAL POLITICAL ECONOMY IN CHINA: THE GLOBAL CONVERSATION* (Margaret Pearson and Wang Yong eds., 2015); Jacques deLisle, *Law and Economy in China*, in *ROUTLEDGE HANDBOOK OF THE CHINESE ECONOMY* 255–79 (Gregory C. Chow and Dwight H. Perkins eds. 2014).

4. Edward S. Steinfeld, *Playing Our Game: Why China's Rise Doesn't Threaten the West*, 11 *J. E. Asian Stud.* 331 (2010); see also CHINA JOINS THE WORLD: PROGRESS AND PROSPECTS (Elizabeth C. Economy, et al. eds., 1998); Jacques deLisle, *China and the WTO: Evolving Agendas of Economic Openness, Domestic Reform,*

As this suggests, and notwithstanding Washington's resistance to China's initial push for WTO membership, a constructivist perspective has been immanent in U.S. policy toward China and its participation in the WTO. Bringing China into international economic legal institutions has been part of the U.S.'s broader strategy toward China. The policy of "constructive engagement" with China has rested on "constructivist" premises. Tellingly, President Clinton pressed Congress to take necessary legislative steps (including granting China normal trading relations or "most favored nation" status) for China's WTO entry by arguing that bringing China into the organization would help change China in ways that would promote U.S. preferences and interests and align with prevailing international economic (and perhaps liberal-democratic political) norms.⁵

China's post-accession approach to the WTO has been something of a mixed bag for a constructivist account. On one hand, China has undertaken the massive reform efforts that Shaffer and Gao detail: Extensive revisions to Chinese laws to comply with WTO requirements, major investments in capacity-building for WTO and trade law, and significant drives to promote public and official awareness of WTO commitments and the regime's stated commitment to those commitments. China has become one of the leading users of the WTO's dispute resolution procedures and has prevailed in significant cases as complainant and respondent. More broadly, China's arguments in defense of its own laws and practices—and its complaints about other states—have remained *infra legem* in the WTO and elsewhere; that is, China has purported to argue in terms of what WTO law requires, rather than launching attacks against existing law.⁶

Moreover, some illiberalism in China's approach to international economic law is consistent with complying with WTO law, making permissible use of WTO processes, and accepting extant rules. As Shaffer and Gao remind us, China has learned, quickly and well, to play the game of using WTO law and procedures to press interests and preferences that sometimes are at odds with liberal principles and U.S. agendas (which themselves can be illiberal). And, Shaffer and Gao also tell us, China may have learned these skills, and a somewhat cynical attitude toward ostensibly fundamental liberal norms in international trade law, from the United States.⁷ For the U.S. policy of constructive engagement, therein lies an abject lesson of "be careful what you wish for because

and *International Status, and Challengers of the Post-Accession Era*, in CHINA UNDER HU JINTAO: OPPORTUNITIES, DANGERS, AND DILEMMAS 229–92 (Tun-jen Cheng, et al. eds., 2005); Pitman B. Potter, *Globalization and Economic Regulation in China: Selective Adaptation of Globalized Norms and Practices*, 2 WASH. U. GLOBAL STUD. L. REV. 119 (2003).

5. *The President's News Conference*, AMERICAN PRESIDENCY PROJECT (Mar. 29, 2000), <http://www.presidency.ucsb.edu/ws/?pid=58305> (last visited Jan. 19, 2018); *Full Text of Clinton's Speech on China Trade Bill*, N.Y. TIMES (Mar. 9, 2000), <https://partners.nytimes.com/library/world/asia/030900clinton-china-text.html>.

6. See, e.g., CHINA AND GLOBAL TRADE GOVERNANCE: CHINA'S FIRST DECADE IN THE WORLD TRADE ORGANIZATION (Ka Zeng and Wei Liang eds., 2013); Ben Baden, *China's Role in the WTO*, CHINA BUS. REV., (Oct. 1, 2011) <https://www.chinabusinessreview.com/chinas-role-in-the-wto/> (assessing China's first decade in the WTO by WTO Director-General Pascal Lamy).

7. Shaffer & Gao, *supra* note 1, at 105. See generally Xiaowen Zhang & Xiaoling Li, *The Politics of Compliance with Adverse WTO Dispute Settlement Rulings in China*, 85 J. CONTEMP. CHINA 143 (2014).

you may get it.” This lesson may become more painful as China continues to reap the benefits of its investments in building WTO and trade law capacity, while U.S. commitments by government and institutionally to sustaining capacity show signs of serious erosion.⁸ For constructivists, this pattern is bittersweet, indicating China’s “socialization” to international practices and rules, yet in a form that may undermine more fundamental norms.

Some nonconformity to WTO rules and obligations in Chinese positions and actions does not necessarily negate a constructivist account. Only an implausibly extreme version of constructivism would see perfect performance as the relevant standard. Shirking and cheating, at some level, are to be expected, all the more so by a state that may be in the process of assimilating to established norms. WTO rules sometimes are indeterminate or contested, especially in application to specific, challenged laws or policies. A challenge to, or attempt to change, existing rules is consistent with a constructivist account. As Shaffer and Gao note, the WTO regime contemplates that members will try to shape rules, so long as they do so through legally and institutionally proper means, and the opportunity to shape WTO rules was a major motivation for China in entering the WTO.⁹

On the other hand, China has faced extensive and wide-ranging criticism, including from the U.S. government, industry, and interest groups, for violating WTO obligations and flouting WTO rules.¹⁰ China has been the most frequent target of complaints in the WTO’s formal dispute resolution process and has lost in significant cases. China’s formally law-abiding response to WTO rulings may be less than meets the eye—“paper compliance” in the language of one noteworthy study.¹¹

More fundamentally, the bar for success in constructivist analysis will have been set disconcertingly low if much of the evidence is “compliance” in forms such as China: exploiting opportunities that the WTO regime provides to depart

8. Karen E. Bravo, *International Economic Law in US Law Schools*, https://mckinneylaw.iu.edu/instructors/Bravo/IntlEconomicLaw_Ch10.pdf (last visited Jan. 19, 2018) (concerning limited teaching of, and support for, international economic law at U.S. law schools); Sharon LaFraniar, et al., *Prerequisite for Key White House Posts: Loyalty, Not Experience*, N.Y. TIMES (Mar. 14, 2017), <https://www.nytimes.com/2017/03/14/us/politics/trump-advisers-experience.html>; Brett Schaefer, *How to Make the State Department More Effective at Implementing U.S. Foreign Policy*, HERITAGE FOUND. (April 20, 2016), <http://www.heritage.org/political-process/report/how-make-the-state-department-more-effective-implementing-us-foreign>.

9. deLisle, *supra* note 4, at 229–92; Shaffer & Gao, *supra* note 1, at 105. For Chinese views indicating rule-shaping as among China’s goals, see generally Lin Guijun & Tang Bi, *China’s Role in the WTO: Opening Up as a Way to Push Forward Reforms and Combat Trade Protectionism*, in CHINA’S WTO ACCESSION REASSESSED 439 (Wang Luolin ed., 2015); Wang Yong, *WTO Accession, Globalization, and a Changing China*, CHINA BUS. REV. (Oct. 1, 2011), <https://www.chinabusinessreview.com/wto-accession-globalization-and-a-changing-china/>.

10. *2016 Report to Congress On China’s WTO Compliance*, UNITED STATES TRADE REP. (Jan. 2017), <https://ustr.gov/sites/default/files/2016-China-Report-to-Congress.pdf>; Stephanie Henry, *USCBC Testifies on China’s WTO Track Record*, US-CHINA BUS. COUNCIL (Oct. 1, 2014), <https://www.uschina.org/washington-update/uscbs-testifies-china%E2%80%99s-wto-track-record>.

11. Timothy Webster, *Paper Compliance: How China Implements WTO Decisions*, 35 MICH. J. INT’L L. 525, 530 (2014).

from the predominantly liberal international legal norms and principles that underpin the WTO; making implausible arguments about the content of WTO law in an effort to legitimate problematic actions, policies, or laws; feigning compliance with WTO rules or rulings; or not exceeding some high threshold of shirking and violating.

II. TRANSNATIONAL INTEREST GROUP POLITICS: SUPPLEMENTARY EXPLANATION AND VULNERABLE PATHWAY

A distinctive strength of Shaffer and Gao's analysis is that it goes beyond most constructivist interpretations of China's WTO behavior. It provides an empirical account of an important mechanism by which the socialization and assimilation that are central to constructivism occurs.

Facing the demands of WTO entry and membership, China invested heavily in building legal capacity to fulfill WTO obligations and to defend China's rights and assert China's interests in the WTO. Efforts that focused initially on academia and government spread to private law firms and industry. The government's trumpeting its commitment to WTO engagement directly and indirectly incentivized law firms and state-linked enterprises to take WTO law seriously. Through a combination of concerted effort and benevolent contagion, stakeholders emerged among scholars and lawyers outside the state and among legal staffers in China's vast bureaucracy (especially the Ministry of Commerce) whose professional identity, self-interest, and subjective preferences became aligned with China's embrace of the WTO, its legal rules, and associated liberal norms of international economic law. Some in this cohort forged supportive bonds with counterparts outside China, in a latter-day, less formal, and more diffuse echo of the top leadership's earlier strategy of joining the WTO to create international pressure for domestic reforms. As staff of other state organs and officers of major enterprises became more familiar and comfortable with the WTO and its legal rules, and as they came to see how WTO law could work to their advantage, they too began to support, or at least accept, China's deepened and largely pro-status quo approach to the WTO.¹²

While these aspects of Shaffer and Gao's account support a constructivist explanation, they also fit—as Shaffer and Gao note when they characterize their account as “most closely resemble[ing] historical institutional theory”—with older traditions in international relations theory that look to interdependence and its interaction with pluralistic domestic politics. On such views, state behavior can be explained by domestic interest group politics, with interest groups sometimes drawing strength from transnational linkages—often rooted in interna-

12. Shaffer & Gao, *supra* note 1, at 119.

tional economic ties—to actors abroad who have common interests or preferences.¹³ Despite its persisting authoritarian political order, Reform-Era China does have something akin to interest group politics. With the repudiation of Mao-Era autarchy, there has been much more room for interest groups to form transnational linkages.¹⁴

Shaffer and Gao's recounting of the emergence, roles, and agendas of China's cadre of internationally connected WTO lawyers fits with this line of international relations thinking and will resonate with many observers of Reform-Era China's cosmopolitan legal elites and other pro-reform elites. What Shaffer and Gao document in the WTO realm rings true more generally. These Chinese scholars, officials, and practicing lawyers have been a formidable force. They have been significant interest groups, favoring generally liberal and international norm-assimilating legal development in China. For much of the Reform Era, their transnational connections have given them intellectual, normative, and political heft in domestic political contests over China's interactions with international legal institutions and norms.

The challenge, for an account of China's WTO-relevant behavior that rests on claims about interdependence-driven transnational linkages and domestic interest groups, is whether these interest groups are truly influential and likely to remain so. There are reasons (including ones to be found in Shaffer and Gao's analysis) to be skeptical in the case of China's cohort of "pro-WTO" lawyers. Shaffer and Gao are careful to note the limits of their interview data and conscious of the perils of selection bias in the subset of relevant actors whom they reached. Still, they cannot entirely overcome the possibility of skewing effects from focusing on a group—China's WTO-savvy and WTO-sympathizing lawyers—that, like many participant-informants, may be inclined to overrate or overstate their impact and influence. WTO-conforming behavior by Chinese state actors may be spurred by one or more of several factors, including ones consistent with other international relations theories that leave little room for the agency of domestic interest groups and, in turn, the impact of their foreign counterparts.

Less abstractly, China's commitment to international trade law, and especially to broader values of liberalism or legality in international economic relations, appears to be uneven, even among the relatively small group of legally trained and law-engaged Chinese on whom Shaffer and Gao focus. For some law firm lawyers, trade law and trade cases appear to be one way of seeking government favor or business.¹⁵ For some government lawyers, WTO law may be part

13. *Id.* at 105 n.19. See generally ROBERT O. KEOHANE & JOSEPH S. NYE, JR., *POWER AND INTERDEPENDENCE* (1977); HELEN V. MILNER, *INTERESTS, INSTITUTIONS, AND INFORMATION DOMESTIC POLITICS AND INTERNATIONAL RELATIONS* (1997).

14. See, e.g., SUSAN L. SHIRK, *HOW CHINA OPENED ITS DOOR: THE POLITICAL SUCCESS OF THE PRC'S FOREIGN TRADE AND INVESTMENT REFORMS* (1994); Erica S. Downs, *New Interest Groups in Chinese Foreign Policy*, JOHN L. THORNTON CHINA CTR., BROOKINGS INST. (Apr. 13, 2011), <https://www.brookings.edu/testimonies/new-interest-groups-in-chinese-foreign-policy/>.

15. Shaffer & Gao, *supra* note 1, at 105.

of their political or policy mandate of the moment, subject to supersession by new priorities and directives from above. For some legal academics, international trade law may be a route to funding and status—perhaps not easily abandoned as a practical matter but something less than a deep calling or defining passion.

Moreover, such “pro-WTO” or liberal-legal-internationalist interest groups and supportive transnational linkages face additional possible limits rooted in elite politics. The top leadership’s pursuit of WTO membership that gave rise to “WTO fever” in China was only partly about policies of liberalization and openness for the economy. It was also about recentralization of power after more than a decade of reform had dispersed authority and led to what top leaders regarded as dangerous governmental indiscipline and frustrating policy inconsistency. Nearly twenty years later, the Chinese regime has become more critical of foreign ideas and the influence in China of foreign organizations.¹⁶

III. SECOND IMAGE THEORIES: POLITICAL SYSTEM-TYPE AND LEADERSHIP CHOICE.

As the foregoing suggests, developments under Xi Jinping—layered on underlying features of China’s political system—have not been entirely salutary for the agenda or influence of pro-liberalization, pro-trade, pro-WTO lawyers. The Xi era has brought rises in: economic nationalism (which can be in tension with WTO liberalization norms); skepticism toward “Western values,” including especially economic and legal models, and Western prescriptions for international economic norms and rules (which suffered a severe loss of prestige amid the Global Financial Crisis); suspicion toward Western influences (which extends to foreign partners and allies of China’s transnationally linked trade lawyers and legal intellectuals); political illiberalism (which is in some tension with economic liberalism and has rarely been good for intellectuals of any stripe in post-1949 China); and reallocation of decision-making power from government institutions to party organs and from more established institutional structures to small, ad hoc leading small groups (which tends to reduce the influence of technocratic specialists, including trade lawyers).

To be sure, moves and signals of the Xi era have been mixed. A major Party Central Committee policy document and other official pronouncements have set forth an ambitious agenda of market-oriented and international norm-conforming economic reforms, sometimes framed as a “new development model” for China.

16. LAW OF THE PEOPLE’S REPUBLIC OF CHINA ON THE MANAGEMENT OF OVERSEAS NON-GOVERNMENTAL ACTIVITIES IN CHINA (2016); Chris Buckley, *China Takes Aim at Western Ideas*, N.Y. TIMES (Aug. 19, 2013), <http://www.nytimes.com/2013/08/20/world/asia/chinas-new-leadership-takes-hard-line-in-secret-memo.html>; *Communiqué on the Current State of the Ideological Sphere*, GEN. OFF. CENT. COMMITTEE COMMUNIST PARTY CHINA (Apr. 22, 2013) (generally known as “Document Number 9,” translation available at <http://www.chinafile.com/document-9-chinafile-translation>); *What Does China’s New ‘Foreign NGO Law’ Mean for Your Organization?*, AMERICAN CHAMBER OF COM. CHINA (July 2016) <https://www.amchamchina.org/policy-advocacy/what-does-chinas-new-foreign-ngo-law-mean-for-your-organization>.

Such sources have articulated a policy of engaging more actively with international law (albeit partly to achieve changes favored by China).¹⁷ Amid the President-Trump-led abandonment by the U.S. of a leadership role, Xi and Premier Li Keqiang have moved to position China as the avatar of international economic liberalism and globalization.¹⁸ Therein lie some reasons for hope that the cadre of trained trade lawyers identified by Shaffer and Gao, and their cosmopolitan and liberal views, can have influence. While such considerations matter in assessing an account of China's international behavior that emphasizes interest groups and transnational linkages, they also point to an analysis rooted in a very different version of international relations theory.

From a "second image" perspective, a state's international behavior reflects its domestic political system.¹⁹ International relations analyses that emphasize domestic political system-type typically consider more fundamental or structural features. One such feature of China's political system is its authoritarian character—specifically the relatively high degree of autonomy that the top leadership exercises in setting policy direction, especially on matters that the leadership views as important and perhaps especially in external relations. Shaffer and Gao recognize this possibility. It is reflected, for example, in their reference to Zhu Rongji famously playing a "two-level game" (in making international commitments to create leverage to force through painful, resistance-provoking domestic reforms).²⁰ This recognition presumably also underlies the importance Shaffer and Gao attach to the policy choices of Xi Jinping, who has emerged as China's most powerful leader since Deng Xiaoping and, perhaps, since Mao Zedong.²¹

17. CHINESE LEGAL REFORM AND THE GLOBAL LEGAL ORDER: ADOPTION AND ADAPTATION (Yun Zhao & Michael Ng eds., 2017); *CCP Central Committee Decision Concerning Some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward*, CHINA COPYRIGHT AND MEDIA (Oct. 28, 2014), <https://chinacopyrightandmedia.wordpress.com/2014/10/28/ccp-central-committee-decision-concerning-some-major-questions-in-comprehensively-moving-governing-the-country-according-to-the-law-forward/>; Jacques deLisle, *Xi Jinping's Impact on China's Legal Development: Domestic and International*, ASAN F. (Oct. 15, 2015), <http://www.theasanforum.org/xi-jinpings-impact-on-chinas-legal-development-domestic-and-international/>.

18. Jamil Anderlini & Wang Feng, *Xi Jinping Delivers Robust Defence of Globalisation at Davos*, FIN. TIMES (Jan. 17, 2017), <https://www.ft.com/content/67ec2ec0-dca2-11e6-9d7c-be108f1c1dce>; Xi Jinping, Keynote Speech at the World Economic Forum (Jan. 17, 2017), <https://america.cgtn.com/2017/01/17/full-text-of-xi-jinping-keynote-at-the-world-economic-forum/>; Li Tao, *Chinese Premier Underscores Support for Free Trade, Globalization*, XINHUA NET (Sept. 13, 2017), http://news.xinhuanet.com/english/2017-09/13/c_136604429.htm.

19. KENNETH WALTZ, *MAN, THE STATE AND WAR* 80–159 (1959); Joe Dagan, *Regime Type, Foreign Policy, and International Relations*, in *INTERNATIONAL STUDIES ENCYCLOPEDIA* (Robert A. Denmark ed., 2010) (summarizing domestic regime-type-based theories of international relations); see also Peter Gourevitch, *The Second Image Reversed: The International Sources of Domestic Politics*, 32 INT'L ORG. 881 (1978).

20. deLisle, *supra* note 4, at 262 n.31; John Fewsmith, *The Political and Social Implications of China's Accession to the WTO*, 167 CHINA Q. 573 (2001); see also Shaffer & Gao, *supra* note 1, at 105 n.19.

21. Shaffer and Gao, *supra* note 1, at 171; Simon Denyer, *China's Leader Elevated to the Level of Mao in Communist Pantheon*, WASH. POST (Oct. 24, 2017), https://www.washingtonpost.com/world/chinas-leader-elevated-to-the-level-of-mao-in-communist-pantheon/2017/10/24/dd911e0-b832-11e7-9b93-b97043e57a22_story.html?utm_term=.32dfce91f30a; Victor Shih & Jude Blanchette, *1.3 Billion People Are in One Man's Grip*, FOREIGN POL'Y (Oct. 16, 2017), <http://foreignpolicy.com/2017/10/16/1-3-billion-people-are-in-one-mans-grip-xi-jinping-china-party-congress/>.

Another related feature of “system type” is China’s having been an authoritarian developmental state. This characteristic (along with the discretionary policy choices of powerful leaders) has favored extensive engagement with the WTO, extensive conformity to WTO rules and norms, and concomitant reforms to the domestic economy to align more closely with prevailing global patterns. But, such behavior does not imply the thoroughgoing convergence that some analytical perspectives of international relations theory might predict. Rather, on this view, China’s approach to the WTO has been instrumental to other goals, primarily economic development and maintaining the regime’s grip on political power (in part through delivering economic gains to its subjects). Thus, steps toward assimilation to international norms may prove to be a matter of harvesting low-hanging fruit—of taking relatively easy steps that offer clear gains with few risks. But, past performance becomes a weaker predictor of future results if the preexisting authoritarian political order, rather than the socializing influence of relatively liberal international norms or the clout of relatively liberal (and transnationally linked) interest groups in pluralistic domestic politics, determines how China engages the international system.²²

Other attributes of China’s political system might limit China’s embrace of liberal norms and rules that underpin the WTO and other international economic legal institutions. The Xi era has offered evidence for those who argue that China’s political economy remains statist—or state capitalist—and thus in tension with liberal international norms.²³ As some analysts see it, the WTO presumes market economies, but China is—and seems likely to remain for some time—out of step with strong versions of that presumption and thus ill-equipped to achieve full compliance with some WTO norms or rules. Some critical assessments of China’s WTO engagement have gone further, arguing that the WTO presumes, and effective compliance in practice requires, a political-legal order very different from China’s—one that is qualitatively more liberal and more law-governed.²⁴

On the other hand, China’s approach to the WTO need not be fixed in stone. Claims of entrenched incompatibility between basic features of China’s domestic political system and the types of international behavior demanded by the WTO or broader international liberal economic norms are controversial and arguably overdrawn. China’s engagement with the WTO and other international institutions has changed much more than have basic features of China’s political system. Many WTO members have accepted China’s certification as a “market

22. See generally Jacques deLisle, *Law and China Development Model*, in *IN SEARCH OF CHINA’S DEVELOPMENT MODEL: BEYOND THE BEIJING CONSENSUS* 147–65 (S. Philip Hsu, et al. eds., 2011); KRISTEN HOPEWELL, *BREAKING THE WTO: HOW EMERGING POWERS DISRUPTED THE NEOLIBERAL PROJECT* 125–46 (2016); Jacques deLisle, *Law in the China Model 2.0: Legality, Developmentalism, and Leninism Under Xi Jinping*, 103 *J. OF CONTEMP. CHINA* 68, 69–84 (2016).

23. See, e.g., YASHENG HUANG, *CAPITALISM WITH CHINESE CHARACTERISTICS: ENTREPRENEURSHIP AND THE STATE* (2008); Ian Bremmer, *State Capitalism Comes of Age: The End of the Free Market?*, 88 *FOREIGN AFF.* 40, 40–55 (2009).

24. Pitman B. Potter, *The Legal Implications of China’s Accession to the WTO*, 167 *CHINA Q.* 592 (2001).

economy.” Further, major changes in Chinese behavior are all the more possible, because one characteristic of China’s political order is room for top leaders to make dramatic changes. This is one plausible characterization of the launch of “reform and opening” under Deng—a second major wave of reforms (including those associated with WTO accession) under Jiang Zemin and a possible new inflection point under Xi (as an especially powerful ruler of an unprecedentedly powerful China). As this last point suggests, a major factor that could affect elite preferences or more directly alter China’s international behavior is China’s transformation from a developing state seeking acceptance in the international order into a great power with the capacity and will to alter the rules and institutions to serve its interests and preferences.

IV. REALISM: POWER SHIFT AND ITS IMPLICATIONS

China’s rise, the relative decline of the United States, and the resulting growth in China’s potential to reshape the WTO and other international economic legal institutions and rules point to the possible explanatory power of another venerable school of international relations thinking: “realism” and its variants (such as structural realism or offensive realism). From a realist perspective, a state’s power and the distribution of power among states explains and predicts how a state will behave, including its conformity to, support for, or investment in international institutions (including legal ones). Shaffer and Gao allow for this possibility as well. The rising clout and assertiveness of China, relative to a waning or withdrawing U.S., accounts for much of the shadow of uncertainty that falls over their final section on possible futures.²⁵

For the international relations realist, China’s status as a rising power portends a less passive and accepting posture toward international institutions and rules, including the WTO and WTO law. A more powerful China is more likely to press for accommodation of its interests and agendas and may challenge or opt out of regimes that are not sufficiently receptive. Power transition theory and offensive realism envision especially bleak prospects. On such accounts, China’s rise risks developments akin to those that accompanied the ascent of Germany and Japan a century earlier. Even if a “tragedy of great power” politics, a “Thucydides trap,” and a full-blown “contest for supremacy” (in the terms used by scholars evaluating U.S.-China relations from a realist perspective) can be avoided, the status quo international order—its institutions and rules—forged by the previously dominant power, faces a crisis born of a newly ascendant power’s demands for revision.²⁶

25. Shaffer & Gao, *supra* note 1, at 165.

26. GRAHAM ALLISON, *DESTINED FOR WAR: CAN AMERICA AND CHINA ESCAPE THUCYDIDES’S TRAP?* (2017); AARON L. FRIEDBERG, *A CONTEST FOR SUPREMACY: CHINA, AMERICA, AND THE STRUGGLE FOR MASTERY IN ASIA* (2012); JOHN J. MEARSHEIMER, *THE TRAGEDY OF GREAT POWER POLITICS* 334–59 (2001); Charles Glaser, *Will China’s Rise Lead to War? Why Realism Does Not Mean Pessimism*, 90 *FOREIGN AFF.* 80, 81–91 (2011).

From this perspective, signs of growing peril for the WTO, other core institutions, and the norms they embody can be found in: China's nonconformity to some WTO rules and obligations; China's demand for a greater role for itself (and other rising powers) in decision-making in international economic institutions; and China's creation of new institutions (such as the Asian Infrastructure Investment Bank, the New Development Bank, China-centered regional trading pacts, and initiatives associated with China's "One Belt One Road" policy) that could become rivals to status quo entities and regimes. Other warning signs include the disdain China's leaders have shown toward Washington Consensus-style orthodoxy and features of the Western-shaped or U.S.-led economic order that permitted the Global Financial Crisis of 2008.²⁷

The lack of deference toward established organizations and rules that a realist analysis would expect from a rising power may be reinforced by China's reaction to a long period of forced exclusion. In the standard Chinese account, China was: denied membership in the informal club of so-called "civilized" states in the nineteenth century; subjected to "semi-colonial" encroachment under "unequal treaties" that greater powers imposed on China and claimed were consistent with international law; excluded from the process (particularly during the nineteenth and early to mid-twentieth century) of shaping ostensibly universal customary international law; and kept out, for decades, from the major international institutions that matter for international law, including the United Nations, the International Court of Justice, and GATT/WTO.²⁸

On softer versions of realism as well, there are reasons for concern about the prospects for the WTO, kindred institutions, and related norms in international economic law. The WTO and other key components of the contemporary international economic regime are credibly characterized as the fruits of hegemonic stability.²⁹ In the postwar era, the United States was a sufficiently dominant power within the West—and, in the post-Cold War period, sufficiently dominant globally—that Washington was willing to bear a disproportionate share of the costs in establishing and maintaining institutions such as GATT/WTO, the IMF, and the World Bank. Bearing outsized costs (whether in the form of direct outlays, tolerance for asymmetric rules or behavior that benefitted other parties, or structuring side payments or sanctions to induce compliant behavior by other parties) was acceptable or desirable to the U.S., because its hegemonic position

27. Daniel C.K. Chow, *Why China Established the Asia Infrastructure Investment Bank*, 49 VAND. J. TRANSNAT'L L. 1255 (2016); Jacques deLisle, *International Law in the Obama Administration's Pivot to Asia*, 48 CASE WESTERN RES. J. INT'L L. 143, 162–174 (2014); *Xinhua Insight: Decoding China's Economic Miracle*, XINHUA NET (Sept. 28, 2017), http://news.xinhuanet.com/english/2017-09/28/c_136646214.htm; *Xinhua Insight: "Xi Political Economy" Renews China's Modernization Drive*, XINHUA NET (Feb. 28, 2017), http://news.xinhuanet.com/english/china/2017-02/28/c_136092129.htm.

28. See generally Jacques deLisle, *China's Approach to International Law: A Historical Perspective*, 94 AM. SOC'Y INT'L L. PROC. 267, 268–275 (2000).

29. ROBERT GILPIN, *WAR AND CHANGE IN WORLD POLITICS* (1983); GEORGE MODELSKI, *LONG CYCLES IN WORLD POLITICS* (1987); Thomas A. McCormick, *World Systems*, 77 J. AM. HIST. 125, 126–32 (1990).

gave it a central role in shaping the regime and a large share of the benefits (whether purely economic or economic and geopolitical).

Within a realist framework, the relative decline in power of the United States and the relative rise of a still-far-short-of-hegemonic China imperil such institutions and associated regimes. President Trump's striking contempt for multilateralism in general, and the WTO and the trade regime more specifically, his withdrawal from the TPP and threat to scuttle NAFTA and to leave the WTO, and so on, may be a contributing cause, or an acute symptom, of the waning of American hegemony in the trade regime and the international economic order more broadly. Whichever way one characterizes developments under President Trump, they are negative indicators for status quo institutions and norms.³⁰

China is unlikely to replace the U.S. in underwriting the established order. China lacks the relative capacity that the U.S. held, first in the non-communist world and then globally, during the last three-quarters of a century. China's forays into possible institution-building or regime-creating have not entailed taking on a role akin to that of the U.S. in recent decades. China has sometimes tolerated unfavorable balances of benefits in trade pacts (such as the ASEAN-China Free Trade Area and the cross-Taiwan-Strait Economic Cooperation Framework Agreement), but these have generally, and in some cases persuasively, been regarded as partly using economic incentives and levers to advance political ends.³¹ This is not to say that the U.S.'s past investment in today's established institutions was un-self-interested. But, China's approach so far has appeared relatively transactional, and thin in providing durable international public goods. More straightforwardly, China has an uneven record of compliance with, and has made pointed criticism of, some existing rules and institutions. And, it has created new organs and agreements that could challenge currently dominant, U.S.-shaped ones.

To be sure, China's statements and actions toward the WTO and other components of the existing regime of international economic law hardly have been unmixed. Negative signs coexist with positive or neutral ones. Xi has presented China as the pillar of globalization and guardian of international economic openness and integration in the wake of the U.S.'s Trump-era retrenchment. China has pledged that the new institutions it has been supporting are supplements, not threats, to existing ones and were made necessary by the failure of the United States to support needed reforms in established organs to meet growing needs

30. Stewart M. Patrick, *Trump and World Order: The Return of Self-Help*, FOREIGN AFF. (March 2017), <https://www.foreignaffairs.com/articles/world/2017-02-13/trump-and-world-order>; Thomas Wright, *Trump, Xi, Putin, and the Axis of Disorder*, BROOKINGS INST. (Nov. 8, 2017), <https://www.brookings.edu/blog/order-from-chaos/2017/11/08/trump-xi-putin-and-the-axis-of-disorder/>.

31. See, e.g., Nargiza Salidjanova, *China's Trade Ambitions: Strategy and Objectives Behind China's Pursuit of Free Trade Agreements*, U.S.-CHINA ECON. & SEC. REV. COMMISSION STAFF RES. REP., (May 28, 2015); Vincent Wei-chen Wang, *The Logic of China-ASEAN FTA*, in SOUTHEAST ASIA AND CHINA: GLOBAL CHANGES AND REGIONAL CHALLENGES 17-41 (Khai Leung Ho & Samuel Ku eds., 2005); Daniel H. Rosen & Zhi Wang, *Deepening China-Taiwan Relations Through the Economic Cooperation Framework Agreement*, PETERSON INST. INT'L ECON., Policy Brief No. PB10-16 (June 2010); Daojiong Zha, *The Politics of China-ASEAN Economic Relations: Assessing the Move Toward a Free Trade Area*, 26 ASIAN PERSP. 53-82 (2002).

and reflect changing patterns of global economic power. In the U.S., President Trump's bluster has often outrun change in U.S. behavior. It is too soon to conclude that the Trumpian turn in the U.S. approach to the WTO and other institutions of a liberal international economic order reflect a deep and permanent U.S. retreat.

For the international relations realist, such seemingly positive signs are unconvincing. They may reflect hollow promises, disingenuous rhetoric, or vestiges of a fading order. At minimum, for the realist, they should not seduce observers into the sin of idealism.³² For the nonrealist or antirealist, the realist argument for dismissing such indications risks proving too much; at the extreme, the realist claims become nearly unfalsifiable. Across a range of international relations views, a key question is whether the WTO and its rules as currently constituted and other elements of the established regime for international economic law can survive absent prior levels of support and leadership by the United States.

V. POST-HEGEMONIC COOPERATION: IS THE WTO ROBUST ENOUGH?

As the agnosticism and incipient pessimism that characterize the latter part of Shaffer and Gao's article reflect, prospects for a robust WTO and an international economic legal order centered on the WTO seem uncertain, or perhaps worse. From the perspective of several schools of international relations thinking, collaboration between the U.S. and China to support the existing order (with limited modifications) would be at least helpful and perhaps indispensable to sustain the current regime. Here, prospects do not seem, in important respects, highly encouraging. Under Xi, China's rhetoric is strongly pro-status quo but is discounted widely, albeit to varying degrees.³³ Under President Trump, the U.S.'s rhetoric has become radically status-quo-rejecting. On both sides, practice and more fine-grained policy have been much more ambivalent. Still, we seem a long way from a "G2" U.S.-China duopoly that could substitute for the prior combination of relatively strong support by a hegemonic United States and relatively ardent constructivist convergence from a China that did not seek to reshape most international regimes.³⁴

32. AN INTRODUCTION TO THE STUDY OF INTERNATIONAL RELATIONS (1964); EDWARD HALLETT CARR, *THE TWENTY YEARS' CRISIS, 1919-1939*: see also ROBERT M. A. CRAWFORD, *IDEALISM AND REALISM IN INTERNATIONAL RELATIONS* (2000).

33. See, e.g., Jeffrey A. Bader, *How Xi Jinping Sees the World . . . and Why*, BROOKINGS INST. (Feb. 11, 2016), <https://www.brookings.edu/research/how-xi-jinping-sees-the-world-and-why/>; Thomas E. Kellogg, *Xi's Davos Speech: Is China the New Champion for the Liberal International Economic Order?*, DIPLOMAT (Jan. 24, 2017), <https://thediplomat.com/2017/01/xi-davos-speech-is-china-the-new-champion-for-the-liberal-international-order/>.

34. Richard C. Bush, *The United States and China: A G-2 in the Making?*, BROOKINGS INST. (Oct. 11, 2011), <https://www.brookings.edu/articles/the-united-states-and-china-a-g-2-in-the-making/>; Karl Friedhoff & Craig Kafura, *Views from the G2: Public Opinion in the United States and China*, CHI. COUNCIL ON GLOBAL AFF. (Dec. 1, 2016), <https://www.thechicagocouncil.org/publication/views-g2-public-opinion-us-china> (surveying public opinion in U.S. and China on U.S.-China relations and U.S. and China roles in world affairs, showing

As this indicates, cooperation under the anarchic conditions of international relations is difficult—very much so according to realist analyses but significantly so from other theoretical perspectives as well. As institutionalist theories of international relations stress, it helps to have in place robust institutions—often as an inheritance from a time when conditions were more favorable for cooperation, institution building, or regime creation.³⁵

The WTO and, in turn, the WTO-centered international economic legal regime, seemingly fit this paradigm. After all, the WTO is a nearly universal membership organization. It has legal rules that address a vast range of economic issues, extending well beyond traditional trade in goods to services, intellectual property rights, transnational investment, and much else. It has a famously formidable court-like dispute resolution system—one that has achieved a strong record of state compliance and one that has been nearly unique (as Shaffer and Gao point out) in securing China's submission to formal international legal process and its outcomes.³⁶ So far, at least, China's potentially revisionist initiatives have been presented as nested within the WTO's capacious reach. Regional and mega-regional trade pacts have been framed as consistent with WTO rules on sub-universal trade pacts. China has presented the AIIB, NDB, and other initiatives as arrangements that will track the rules of established institutions, and they do not appear to pose near-term challenges to the status quo.³⁷

Yet, as Shaffer and Gao's guarded look to the future reflects, there are many vulnerabilities here. The once-dynamic expansion of the WTO's domain and ability to deepen international economic openness and integration have waned dramatically since the start of the Doha Round of WTO negotiations. The locus of trade and expansive "trade-plus" deals has moved outside the WTO to more ad hoc arrangements, such as the China-centered Regional Comprehensive Economic Partnership, the Trans-Pacific Partnership, and other multilateral accords. Major opportunities and challenges in international economic relations lie beyond the scope, or outside the core strengths, of the WTO: addressing allegations of relatively subtle violations of established norms and rules that occur through state-linked enterprises not playing by market principles; shaping rules for transnational investment or national industrial policy that are more complicated and

results not predicting or supporting close cooperation); Cong Mu, *Wen Rules Out 'G2' Proposal*, GLOBAL TIMES (May 22, 2009), <http://www.globaltimes.cn/content/431991.shtml>.

35. See generally INTERNATIONAL REGIMES (Stephen D. Krasner ed., 1983); ROBERT O. KEOHANE, AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY (1984); KENNETH A. OYE, COOPERATION UNDER ANARCHY (1986).

36. GERALD CHAN, CHINA'S COMPLIANCE IN GLOBAL AFFAIRS: TRADE, ARMS CONTROL, ENVIRONMENTAL PROTECTION, HUMAN RIGHTS 79–110 (2005); Henry S. Gao, *Aggressive Legalism: The East Asian Experience and Lessons for China*, in CHINA'S PARTICIPATION IN THE WTO (Henry Gao & Donald Lewis eds., 2005); John H. Jackson, *Perceptions About the WTO Trade Institutions*, 1 WORLD TRADE REV. 101 (2002); Shaffer & Gao, *supra* note 1, at 108.

37. G. John Ikenberry & Darren J. Lim, *China's Emerging Institutional Statecraft: The Asian Infrastructure Investment Bank and the Prospects for Counter-Hegemony*, BROOKINGS INST. (Apr. 2017), <https://www.brookings.edu/wp-content/uploads/2017/04/chinas-emerging-institutional-statecraft.pdf>; Phillip Y. Lipsey, *Who's Afraid of the AIIB: Why the United States Should Support China's Asian Infrastructure Investment Bank*, FOREIGN AFF. (May 7, 2015), <https://www.foreignaffairs.com/articles/china/2015-05-07/whos-afraid-aiib>.

reach much farther into domestic economic regulation than the WTO's investment regime has; and addressing transnational disharmony in environmental, labor, and human rights standards.³⁸ Although still in their infancy, the new institutions that China has created or might create could further reduce the relative importance of the WTO, IMF, World Bank, and kindred pillars of the existing order, and could generate norms and rules adverse to the current system.

In this sense, China has acquired an option to support or undermine the WTO and the wider international economic legal regime, and China has been able to do so in part, because the United States under President Trump has removed itself from the role it would ordinarily have played in pressing China to clarify its aims or contesting Beijing's claim to the mantle of economic globalization's defender. In this unsettled and uncertain environment, much will depend on whether those who favor the broadly liberal international economic legal order associated with the WTO—including the cadre of Chinese trade law experts considered by Shaffer and Gao, and groups in the U.S. appalled by Trumpian economic nationalism—will see, or make, their preferences prevail.

38. Pascal Lamy, *Trade Pacts Pose New Challenge to the Multilateral Trading System* (July 20, 2011), <https://www.globalpolicy.org/global-taxes/50476-lamy-trade-pacts-pose-new-challenge-to-the-multilateral-trading-system-.html> (providing speech of WTO Director General); Ricardo Melendez-Ortiz, *The Future and the WTO: Confronting the Challenges*, INT'L CTR. FOR TRADE & SUSTAINABLE DEV. (Christophe Bellmann & Miguel Rodriguez Mendoza eds., July 2012), <https://www.ictsd.org/downloads/2012/07/the-future-and-the-wto-confronting-the-challenges.pdf>; Gordon Wong, *The Beginning of World Trade Disorganization?*, DIPLOMAT (Jan. 15, 2015), <https://thediplomat.com/2015/01/the-beginning-of-world-trade-disorganization/>.