Articles

Markets, Democracy, and Ethnicity: Toward a New Paradigm for Law and Development

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I. INTRODUCTION

It is by now a commonplace that we are living in a period of radical global transformation. Particularly in the developing world, this transformation has had two watchwords: markets and democracy. Indeed, the reascendant teleology of free-market democracy has redefined the very concept of underdevelopment—a term that has shed its exclusively Third World trappings and today joins in a single embrace countries from Algeria to Azerbaijan, from Pakistan to Poland.

Marketization and democratization each have been the site of massive Western legal intervention in the developing world. Legal work on marketization ranges from structuring international project finance to drafting market-oriented laws to developing legal regimes that facilitate the transition from command to market economies. Work on democratization includes not only writing constitutions but also grappling with formidable legal problems. See, e.g., Joseph E. Stiglitz, Whither Socialism? 1-3 (1995); Lester C. Thurow, The Future of Capitalism 1-5 (1995); Roberto Mangabeira Unger, Democracy Realized (forthcoming Oct. 1998) (manuscript at 5, on file with The Yale Law Journal); The World Bank Group, Learning from the Past, Embracing the Future 10-13 (1994); Samuel P. Huntington, Challenges Facing Democracy: What Cost Freedom?, CURRENT, June 1993, at 22, 22.


issues such as the transplantability of Western social and political institutions and postcommunist state building.

But there is one constitutive element of developing societies that these interventions repeatedly overlook. Entrenched ethnic divisions permeate most developing countries, and these divisions bear a distinctive and potentially subversive relationship to the project of marketization and democratization. In First World countries, markets have tended to reinforce the economic dominance of a perceived ethnic majority over those countries’ most salient ethnic minorities—hence the controversial calls for (and backlash against) market-“correcting” affirmative action for blacks and Hispanics in the United States. In the developing world, the ethnoeconomic dynamic tends to be just the reverse: Markets often reinforce the economic dominance of certain ethnic minorities. In the First World, democracy poses no radical challenge to economically dominant ethnic groups. By contrast, in the developing world, democracy characteristically pits a politically powerful but impoverished “indigenous” majority against an economically dominant ethnic minority.

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8. See infra notes 64-69 and accompanying text.
9. See, e.g., Susan Rose-Ackerman, Reducing Bribery in the Public Sector, in Corruption and Democracy 21, 22 (Duc V. Trang ed., 1994) (noting that corruption, itself often a response to a weak state, may in turn render more difficult “the move to a modern bureaucratic, democratic state”); Stephen Holmes, Can Weak-State Liberalism Survive? 3–7 (Spring 1997) (unpublished manuscript, on file with The Yale Law Journal) (discussing the problems hindering the establishment of a liberal state in postcommunist Russia).
11. See, e.g., William Claiborne, Affirmative Action Ban Is Upheld: California Proposition Constitutionally Valid, U.S. Appeals Panel Says, WASH. POST, Apr. 9, 1997, at A1; Anne Laurent, The Great Divide: Fear, Anger and Resentment in the Federal Diversity Crusade, NAT’L J., Apr. 1996, at 12. There is obvious artificiality in referring to “whites” as an ethnic group in a country such as the United States (note, for example, that Italian Americans are counted as “whites” whereas Hispanic Americans are generally treated as a separate ethnic group). See BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, 1990 CPH-2-1, 1990 CENSUS OF POPULATION AND HOUSING: POPULATION AND HOUSING UNIT COUNTS, UNITED STATES app. E-6 (1990) (requesting information regarding the respondent’s “race” in question 4 and asking whether the respondent is “of Spanish/Hispanic origin” in question 7); see also IAN F. HANEY LÓPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE at xiv (1996) (noting that “White” refers to an “unstable category which gains its meaning only through social relations and that encompasses a profoundly diverse set of persons”). Nonetheless, it remains the case that the core ethnic problem in countries such as the United States is one that pits an economically and politically dominant white majority against economically and politically weaker ethnic minorities.
12. See infra note 132. This might change in the future. For example, according to some demographers (and opponents of immigration), whites could become a minority in the United States as early as 2050 if percentages of Hispanic, Asian, and African Americans continue to rise. See Tom Morganthau, The Face of the Future, NEWSWEEK, Jan. 27, 1997, at 58.
13. As explained below, claims of majority “indigenousness” are often extremely artificial. See infra text accompanying notes 167–172.
From these simple premises, a number of profound implications follow. First, far from having the civilizing effect that Montesquieu envisioned, marketization in the developing world is often destabilizing, fomenting ethnic envy and hatred among often chronically poor majorities. Second, in most developing countries, democracy can proceed only in deep tension with markets. Rather than reinforcing the market’s efficiency and wealth-producing effects, democratization ordinarily will lead to powerful ethnonationalist, antimarket pressures. Third, ethnic division in the developing world cannot be regarded as just another aspect of underdevelopment curable by the universal prescription of free-market democracy. On the contrary, the combined pursuit of marketization and democratization in the developing world is likely to catalyze ethnic tensions, with potentially catastrophic effects, including the subversion of both markets and democracy.

Despite compelling historical and sociological evidence corroborating these propositions, and despite the unprecedented influence currently wielded by American lawyers in the developing world, the interrelationship among marketization, democratization, and ethnic conflict has been almost entirely ignored. This Article will provide a framework for analyzing and addressing the consequences likely to ensue when markets and democracy collide with the particular ethnic structures that characterize most developing societies. Although there are other potential axes of social division in developing societies, over the last several decades

15. See, e.g., infra notes 178-200, 212-241, 252-272, 301-307 and accompanying text.
16. See infra note 51.
17. There is a large theoretical and empirical literature on the correlation between ethnic fragmentation and economic growth. See, e.g., William Easterly & Ross Levine, Africa’s Growth Tragedy: Policies and Ethnic Divisions, 112 Q.J. ECON. 1203 (1997); Ted Robert Gurr, Peoples Against States: Ethnopolitical Conflict and the Changing World System, 38 INT’L STUD. Q. 347 (1994). There is also a significant literature studying the link between markets and democracy. See, e.g., CAPITALISM, SOCIALISM, AND DEMOCRACY REVISITED (Larry Diamond & Marc F. Plattner eds., 1993); HAIGGARD & KAUFMAN, supra note 3; José María Maravall, The Myth of the Authoritarian Advantage, J. DEMOCRACY, Oct. 1994, at 17; Minxin Pei, The Puzzle of the East Asian Exceptionalism, J. DEMOCRACY, Oct. 1994, at 90. In addition, a growing literature explores the relationship between democracy and ethnic conflict. See sources cited infra note 208. To date, however, no one has systematically analyzed the interrelationship among all three forces.
18. In an earlier article, I analyzed the relationship in Latin America and Southeast Asia between markets and ethnicity. See Amy L. Chua, The Privatization-Nationalization Cycle: The Link Between Markets and Ethnicity in Developing Countries, 95 COLUM. L. REV. 223 (1995). This Article expands my earlier inquiry by adding democratization to the picture and by broadening my geographical focus. Under the model proposed in this Article, nationalization is just one of several possible equilibria that may result when markets and democracy are pursued in the face of entrenched ethnic divisions. See infra text accompanying notes 248-262.
ethnicity “[a]s a political idea, as a mobilizing principle,” has spread through the world with striking new intensity and has been a far more fertile source of mass conflict than, for example, class or religion.

Part II describes the prevailing law and development paradigm and argues that the ideology of free-market democracy forms the theoretical core of today’s international development literature, policy, and practice. Part III highlights a fundamental and pervasive feature of developing societies that lawyers and legal scholars involved in the developing world almost uniformly have disregarded. Most developing countries have one or more ethnic minorities who, for widely varying reasons, have economically dominated the “indigenous” majorities around them. Under certain conditions, the presence of an economically dominant minority will introduce a fundamental tension between markets and democracy. This will be the case whenever the economically dominant minority is also market-dominant, meaning that it tends to be economically dominant under market conditions. In developing countries with a market-dominant minority, markets and democracy will tend to favor different ethnic groups. Markets will (by definition) benefit the market-dominant minority, while democracy will increase the power of the relatively impoverished majority. In these circumstances, markets and democracy will not be mutually reinforcing. Rather, the combined pursuit of markets and democracy will produce a very charged and unstable situation.

Part IV proposes a model to explore the consequences of pursuing markets and democracy under these conditions. The sobering thrust of the model is that in many developing countries, the combined pursuit of marketization and democratization will likely lead to one of three nonexclusive outcomes: (1) an ethnically fueled antimarket backlash; (2) actions directed at eliminating the market-dominant minority (for example, atrocity or expulsion); or (3) a retreat from democracy.

Part V applies the model developed in Part IV to three countries currently receiving extraordinary attention from the international business and legal communities: South Africa (the “next Hong Kong?”), Kazakhstan (the next Kuwait?), and Vietnam (the next “Asian Tiger?”).

20. See id. at 5-6, 20, 25.
21. See infra notes 158-159 and accompanying text.
22. Whether any given ethnic minority is market-dominant is a complex question that I discuss more fully below. See infra Section III.C.
Without purporting to offer a how-to guide, Part V explores the question of which reforms, legal and nonlegal, would lead to the long-term success of markets and democracy in the developing world. If the model is correct, a critical policy question is whether the potentially explosive ethnic dynamics triggered by markets and democracy in developing countries can be kept in check with conventional human rights and social welfare measures (for example, judicial reform, international treaties, progressive taxation, social security, and public works projects) or whether they require more radical measures. Ultimately, the historical record of the developing world suggests that, short-term efficiency costs notwithstanding, narrowly tailored, ethnically conscious interventions into the market may prove the best way of forestalling more drastic outcomes (for example, ethnically targeted expropriations or ethnic eliminationism). Along with market adjustments, there might also be room for ethnically conscious adjustments to the democratic process.

In their systematic ahistoricism, Western lawyers involved in the developing world have not focused enough on whether today’s sophisticated market initiatives fundamentally differ from the market policies of the past when viewed from a distributional and ethnodistributional perspective. Are today’s international asset securitizations and telecommunications privatizations structurally any more advantageous to majorities in developing countries than yesterday’s mining concessions? Why have some groups repeatedly fared better than others under market conditions? Proponents of marketization and democratization must start confronting these questions, however awkward or unsettling. If they do not, markets and democracy in the developing world will remain mutually subversive.

II. LAW AND DEVELOPMENT: THE CURRENT PARADIGM

Notwithstanding the operatic “death” of the law and development movement twenty years ago, its central tenets remain the intellectual backbone of international development policy and practice. Section A will clarify my use of certain terminology in this Article. Section B will describe the rise and fall of the early law and development movement. Section C will describe the prevailing law and development orthodoxy, as manifested both in the current literature and in practical international application. Finally, Section D will highlight a fundamental problem in the current paradigm.

A. Terminology

In this Article, the term “marketization” refers to the whole spectrum of efforts toward privatization and contractualization of economic activity in developing and transitional economies, ranging from the replacement of a command economy with market mechanisms to typical “economic liberalization” measures (such as privatization, liberalization of investment and trade restrictions, and elimination of price controls).26

“Democracy” is a contested term and can take numerous forms.27 In this Article, I will adopt what Jon Elster describes as the basic definition of democracy: “simple majority rule, based on the principle ‘One person one vote.’”28 The term “democratization” will refer broadly to any political

26. Cf. LUDWIKOWSKI, supra note 7, at 163 (defining marketization as a “fundamental structural economic change signified by massive privatization, price liberalization, the introduction of internal exchange convertibility, a certain amount of competition, and elimination of most governmental subsidies”). Although virtually all economic systems have both market and nonmarket elements, the extent of government economic intervention in any given society will be a matter of degree, ranging “from the all-encompassing role assumed in some centrally planned socialist economies, to the very limited role that it [has heretofore undertaken] in Hong Kong.” STIGLITZ, supra note 2, at 231. It is thus possible to speak of relatively more or less “marketized” economies.


28. Jon Elster, Introduction to CONSTITUTIONALISM AND DEMOCRACY 1 (Jon Elster & Rune Slagstad eds., 1988). Samuel Huntington has summarized the issue nicely:

[T]he definition of democracy in terms of elections is a minimal definition. To some people democracy has or should have much more sweeping and idealistic connotations. To them, “true democracy” means liberté, égalité, fraternité, effective citizen control over policy . . . and various other civic virtues . . . . [Defining] democracy in these terms . . . raise all the problems that come up with the definitions of democracy by source or by purpose. Fuzzy norms do not yield useful analysis. Elections, open, free, and fair, are the essence of democracy, the inescapable sina qua non.

SAMUEL P. HUNTINGTON, THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY 9 (1991); cf. Mancur Olson, Dictatorship, Democracy, and Development, 87 AM. POL. SCI. REV. 567, 570 (1993) (noting that while “[d]emocracies vary so much that no one conclusion can cover all cases . . . . many practical insights can be obtained by thinking first about one of the simplest democratic situations”).
reform introducing greater electoral competition or increased majoritarianism in the political process.

Ethnicity is another controversial concept that has generated much debate among social scientists. Following Horowitz and others, I adopt "an inclusive conception of ethnicity," which acknowledges the importance of subjective perceptions of identity and encompasses differences along racial lines (for example, blacks and whites in the United States or South Africa), lines of geographic origin (for example, Malays, Chinese, and Indians in Malaysia), and linguistic, religious, tribal, or other cultural lines (for example, Protestants and Catholics in Ireland, and Hutus and Tutsis in Rwanda).

I use terms such as "developing" and "underdeveloped" to refer to countries with, relatively speaking, low per capita incomes, low rates of labor productivity, and large segments of their populations engaged in

29. See SCHUMPETER, supra note 27, at 269.
31. A principal debate in this area has been between "primordialism" and "instrumentalism." Primordialism holds that ethnic identity is "so deeply rooted" (perhaps even biologically) "in historical experience that it should properly be treated as a given in human relations." MILTON J. ESMAN, ETHNIC POLITICS 10 (1994). For scholarship inclining toward or embracing primordialism, see HAROLD R. ISAACS, IDOLS OF THE TRIBE: GROUP IDENTITY AND POLITICAL CHANGE 38-45 (1975); ANTHONY D. SMITH, THE ETHNIC ORIGINS OF NATIONS 11-13, 32 (1986); and PIERRE L. VAN DEN BERGHE, THE ETHNIC PHENOMENON 27-28, 35-36 (1981). By contrast, instrumentalists emphasize the importance of subjective factors and hold "that ethnicity is not a historical given at all, but in fact a highly adaptive and malleable phenomenon." ESMAN, supra, at 10. "Thus, according to many instrumentalists, ethnicity is either an ideology that elites construct and deconstruct for opportunistic reasons or a set of myths calculated to mobilize mass support." Id. at 11. For expressions of the instrumentalist position, see PAUL R. BRASS, ETHNICITY AND NATIONALISM: THEORY AND COMPARISON 19 (1991); Fredrik Barth, Introduction to Ethnic Groups and Boundaries 9-10, 13-15 (Fredrik Barth ed., 1969); and sources cited infra note 177.
32. HOROWITZ, supra note 10, at 59-60 (footnote omitted).
agriculture. In short, these terms refer to countries that “have not yet achieved, but generally aspire to, self-sustaining economic growth.”

B. The Early Law and Development Movement

The law and development movement was born in the mid-1960s at leading American law schools such as Harvard, Stanford, Wisconsin, and Yale. The movement adhered to the basic premise of modernization theory “that development was an inevitable, evolutionary process of increasing societal differentiation that would ultimately produce economic, political, and social institutions similar to those in the West.”


37. Bilder & Tamanaha, supra note 36, at 471. According to modernization theory (which arose in the wake of World War II principally through the efforts of American economists, political scientists, and sociologists), political development required four elements: (1) rationalization, involving “movement from particularism to universalism, from diffuseness to specificity, from ascription to achievement, and from affectivity to affective neutrality”; (2) national integration or “nation-building”; (3) democratization, emphasizing pluralism, competitiveness, and equality; and (4) mobilization or participation, to be achieved through “increases in literacy, urbanization, exposure to mass media, industrialization,” and so on. Samuel P. Huntington, Political Development and Decay, in Political System and Change 95, 96-97 (Ikuo Kabashima & Lynn T. White III eds., 1986); see also David E. Apter, Rethinking Development: Modernization, Dependency, and Post-Modern Politics 16 (1987) (describing one goal of modernization theory as “the recapitulation in nonindustrial settings of the functional roles, classes, and reciprocities that appeared first in the old ‘metropoles’”).
Emphasizing the importance of law in the development of a market economy and democratic values, law and development scholars attempted to assist developing countries in establishing Western-style legal institutions. In so doing, the law and development movement self-consciously sought to supplant Third World "localism," "irregularity, and particularism" with the "unity, uniformity, and universality" of the modern Western state. Ethnic identity and ethnic conflict were aspects of traditionalism or "pre-modernity" that in the course of development "were ultimately supposed to disappear." The ultimate goal of the development process was to be the creation of a free-market system (which in turn would bring economic growth), liberal democratic government institutions, and the rule of law.

By the mid-1970s, barely a decade after its inception, the law and development movement had fallen into open crisis. In a well-known piece entitled Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States, Professors Trubek and Galanter criticized the paradigm of "liberal legalism," which they had

38. Law was seen as essential to the creation and maintenance of markets. Because of its "predictability as a set of universal rules uniformly applied. . . . modern law encourages men to engage in new forms of economic activity and guarantees that the fruits of this activity will be protected." Trubek, supra note 35, at 7. At the same time, by restraining arbitrary or oppressive government action, law would foster political development and serve as the foundation of the liberal democratic state. See Kenneth L. Karst, Law in Developing Countries, 60 L. Libr. J. 13, 16-19 (1967); Trubek, supra note 35, at 8-9.

39. For example, American legal scholars urged and participated in the development of capital market programs, which were supposed to foster the development of Western-style regulatory regimes and systems of private rights. See Trubek, supra note 35, at 45-46. The hope was that capital markets "would demand 'modern' substantive codes, a more stable and coherent body of laws, a reduction in government ad hoc decisionmaking, judicial reform, rationality in legal thought, and a restructuring of professional organization." Id. at 46. Educational reform was another primary emphasis of the law and development movement. See, e.g., Karst, supra note 38, at 19 (calling for a "radical re-ordering of legal education" in the developing world); Trubek, supra note 36, at 23 ("We devised grand programs to re-educate Third World lawyers . . . . By exporting the educational techniques of the American law school—socratic method, social science, and all—we would strengthen legal institutions just as AID agricultural technicians were transforming small, yellow eggs into large, white ones.").


42. See Trubek, supra note 35, at 6-9; Bilder & Tamanaha, supra note 36, at 471; see also Trubek, supra note 36, at 23 (describing retrospectively the mission of the early law and development movement as "exporting democratic capitalism" to countries seen as "too poor or benighted to grasp the possibilities of this superior form of civilization").

43. This onset of crisis roughly coincided with the civil rights movement and anti-Vietnam War protests, which were calling into question the American system and ideals. See Bilder & Tamanaha, supra note 36, at 472.

previously championed, as being “ethnocentric and naive.”\textsuperscript{45} Liberal
legalism, they argued, ignored the severe “social stratification and class
 cleavage” in developing societies and failed to recognize that “in much of
the Third World the grip of tribe, clan, and local community is far stronger
than that of the nation-state.”\textsuperscript{46} More radically, Trubek and Galanter
challenged the institution of law itself, suggesting that even in countries
such as the United States the legal system reinforces “domination by elite
groups” and legitimates “arbitrary actions by government.”\textsuperscript{47}

Not long after the publication of \textit{Scholars in Self-Estrangement}, “the
law and development movement in the United States all but expired. Money
stopped flowing from foundations. Various institutes and programs
dedicated to the subject were scaled back or terminated. The scholars
involved moved on to other pursuits.”\textsuperscript{48} Since that time, numerous scholars
have pondered the “death” of the law and development field.\textsuperscript{49} A few have
even written “memoirs.”\textsuperscript{50} As I will suggest, however, the epitaph remains
to be written.

C. Law and Development Today

Despite the demise of the early law and development movement,
American lawyers and legal scholars today are helping to shape the
fundamental economic and political institutions of the developing world
to an extent unprecedented since decolonization.\textsuperscript{51} Much has changed about
the law and development field. Today, many of the lawyers most centrally
involved in the developing world are law and economics luminaries,
costitutional designers, and Wall Street practitioners. With some
exceptions, legal work on development is more sophisticated than ever.

\textsuperscript{45} Id. at 1070, 1080.
\textsuperscript{46} Id. at 1080 (citation omitted). In addition, liberal legalism assumed the existence of an
independent judiciary, whereas developing countries’ courts were typically weak and captured by
“political, tribal, religious, or class interests.” Id. at 1080-81. Moreover, legal rules in the Third
World principally served the interests of the elite and rarely were internalized by the vast majority
of the population. See id.
\textsuperscript{47} Id. at 1083.
\textsuperscript{48} Bilder & Tamanaha, supra note 36, at 474.
\textsuperscript{49} See, e.g., \textit{Introduction} to \textit{LAW AND DEVELOPMENT}, supra note 36, at xi (“[L]aw and
development has been so marked by controversy . . . it can be said to be almost stillborn . . . .”);
Merryman, supra note 36, at 460 (“Are we witnessing the death of a field, the realization that one
was never born . . . or what?”).
\textsuperscript{50} See, e.g., Trubek, supra note 36, at 5 (offering “more than a memoir [but] less than a
history” of the movement).
\textsuperscript{51} See, e.g., Donald L. Horowitz, \textit{Democracy in Divided Societies}, 4 J. DEMOCRACY 18, 35
Citrano, \textit{Shrinking Governments Fatten City Firms}, CRAIN'S N.Y. BUS., Jan. 11, 1993, at 11;
Wendy Cooper & Harvey D. Shapiro, \textit{Privatization of Privatization}, INSTITUTIONAL INVESTOR,
Moreover, the disintegration of the former Communist bloc has raised a host of challenging legal issues of first impression.

Nevertheless, the thrust of international development policy today remains essentially what it was in the sixties and seventies: to export markets, democracy, and the rule of law to the developing world. In this Section, I will first survey the current literature relating to law in the developing world. This literature is highly interdisciplinary, including political scientists and economists among its leading contributors. I will limit my discussion here to work directed at the legal community or relating specifically to legal institutions. I will then discuss international development policy and practice.

1. The Current Literature

Today’s law and development literature can be divided into two broad categories. First, a relatively small number of scholars who consciously identify themselves with law and development have generally picked up where the movement of the 1960s and 1970s left off. Often associated with “leftist” causes, these scholars continue in their writings to struggle with a host of difficult and profound issues, such as law’s impotence or “epiphenomenality”, its disingenuous claims to neutrality, its ethnocentricity, and its “infamy” in contributing to the oppression of the disempowered.

In terms of sheer volume and actual influence, however, by far the more massive contribution to the law and development literature has been made by lawyers who probably do not think of themselves as law and development “types.” This second category includes practitioner-written pieces as well as a much more theoretical academic literature.

52. See, e.g., Sammy Adelman & A. Caesar Espiritu, Debt Crisis, Underdevelopment and the Limits of the Law, in LAW AND CRISIS IN THE THIRD WORLD, supra note 36, at 172, 182 (stating that the role played by law in the debt crisis of the 1980s was “largely epiphenomenal”); Bilder & Tamanaha, supra note 36, at 486.

53. See, e.g., Yash Ghai, Constitutions and Governance in Africa: A Prolegomenon, in LAW AND CRISIS IN THE THIRD WORLD, supra note 36, at 51, 55 (suggesting that despite law’s appearance of autonomy and neutrality it “is a powerful means for the legitimation of Western regimes, and is carefully cultivated by their rulers”).

54. See, e.g., RAJNI KOTHARI, RETHINKING DEVELOPMENT: IN SEARCH OF HUMANE ALTERNATIVES 192-93 (1989) (describing modernity’s paranoid drive to fashion the world after the Occidental ideal); Adeno Addis, Individualism, Communitarianism, and the Rights of Ethnic Minorities, 61 NOTRE DAME L. REV. 615, 618-19 (1992) (critiquing prevailing views of democracy and development that are incompatible with the affirmation of ethnic differences); cf. Bilder & Tamanaha, supra note 36, at 481-82 (discussing the tensions inherent in claims of law’s ethnocentrism).

55. Peter Fitzpatrick, Law’s Infamy, in LAW AND CRISIS IN THE THIRD WORLD, supra note 36, at 27, 27 (suggesting “that the blithe advocacy of law in the cause of development is flawed in its very foundation”).
Markets, Democracy, and Ethnicity

In the last five years, there have been hundreds of articles written by legal practitioners involved in the developing world. In Professor Mark Sidel's words, "[t]his output is almost entirely descriptive and oriented in a wholly instrumental fashion to the requirements of trade and investment." Typical topics include trade and foreign investment regulation, taxation and tax policy, banking law, concession law, dispute resolution, and technology transfer. Professor Sidel is correct in cautioning that "[w]e should not impose an entirely scholarly lens on materials written, primarily, for practical, utilitarian reasons." Still, it is noteworthy that the overwhelming thrust of this massive body of legal commentary is to urge the rapid and full-blown liberalization and marketization of developing world economies (hardly surprising when one considers the financial interests involved).

Alongside this practitioner-oriented work, there is also a large academic literature relating to today's developing world transformations. Most of this literature too can be characterized as addressing either marketization or democratization. As to marketization, a significant part of the literature addresses, from a variety of perspectives, the transitions from command to market economies in the countries of the former Soviet bloc. The more halting market-oriented reforms of Cambodia, China, Vietnam, and other nominally Communist countries also have generated a proliferating body of

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56. For a tiny sampling of such practitioner-oriented output, see infra note 599, listing recent articles on Vietnam.
58. See id. at 712.
59. Id. at 714.
61. See, e.g., E. Donald Elliott, Environmental Protection and the Development of Free Markets in Russia, in LAW AND DEMOCRACY IN THE NEW RUSSIA 107, 108-11 (Bruce L.R. Smith & Gennady M. Danilenko eds., 1993) (offering a comparative environmental perspective); Michael A. Heller, The Tragedy of the Anticommons Property in the Transition from Marx to Markets, 111 HARV. L. REV. 621 (1998) (presenting a property perspective). Professors Roman Frydman and Andrzej Rapacynski have made especially notable contributions to this area. For nearly a decade now, they have studied the post-Soviet transitions, beginning with the early implementation stage. See ROMAN FRYDMAN ET AL., THE PRIVATIZATION PROCESS IN CENTRAL EUROPE (1993) (describing the privatization process and relevant legal framework in Central Europe). They have focused most recently on the problem of "overwhelming insider-domination of [Russia's] privatized firms." Roman Frydman et al., Investing in Insider-Dominated Firms: A Study of Russian Voucher Privatization Funds, in CORPORATE GOVERNANCE IN CENTRAL EUROPE AND RUSSIA 187, 189 (Roman Frydman et al. eds., 1996).
More generally, there have been dozens of recent law review articles seeking to assist developing countries in their economic liberalizations. As with marketization, the work on democratization in the developing world varies considerably in scope and quality. Besides the massive political science literature on this subject, there is also a growing body of work by lawyers and legal academics struggling with the issue of the transplantability of Western-style democratic and rule-of-law institutions in countries with vastly different histories and social structures. This work ranges from highly abstract treatments to region- or country-specific studies of democracy's preconditions, optimal institutions, or


63. For particularly thoughtful treatments, see, for example, Enrique R. Carrasco & Randall Thomas, Encouraging Relational Investment and Controlling Portfolio Investment in Developing Countries in the Aftermath of the Mexican Financial Crisis, 34 COLUM. J. TRANSNAT'L L. 539 (1996); and David W. Leebron, A Game Theoretic Approach to the Regulation of Foreign Direct Investment and the Multinational Corporation, 60 U. CIN. L. REV. 305 (1991). In addition, the Asian Development Bank has compiled an excellent bibliography of academic literature on law and development in the Asia-Pacific region. See OFFICE OF THE GEN. COUNSEL, ASIAN DEV. BANK, LAW AND DEVELOPMENT: AN ASIAN BIBLIOGRAPHY (1997).

64. For influential texts in this area, see BARRINGTON MOORE, JR., SOCIAL ORIGINS OF DICTATORSHIP AND DEMOCRACY: LORD AND PEASANT IN THE MAKING OF THE MODERN WORLD 418-32 (1966), which suggests that conditions are more propitious for democracy where the social and economic power of the landed aristocracy is in decline relative to that of the bourgeoisie; Fernando Henrique Cardoso, Associated-Dependent Development: Theoretical and Practical Implications, in AUTHORITARIANISM IN BRAZIL 142, 146-48 (Alfred Stepan ed., 1973), which argues that international capitalism played an important role in facilitating the 1964 military overthrow of the Brazilian populist regime; Samuel P. Huntington, Will Countries Become More Democratic?, 99 POL. SCI. Q. 193, 205-07 (1984), which links the success of democracy in developing countries to U.S. foreign policy; Seymour Martin Lipset, Some Social Requisites of Democracy: Economic Development and Political Legitimacy, 53 AM. POL. SCI. REV. 69, 75-77 (1959), which notes that “the more well-to-do a nation, the greater the chances that it will sustain democracy”; and Dankwart A. Rustow, Transitions to Democracy: Toward a Dynamic Model, 3 COMP. POL. 337, 350, 361-63 (1970), which proposes a model of democratization premised on the condition of national unity. For an excellent compilation of work on democratic transitions in the developing world, see generally TRANSITIONS TO DEMOCRACY, supra note 27.


66. See, e.g., Frances H. Foster, Information and the Problem of Democracy: The Russian Experience, 44 AM. J. COMP. L. 243, 275 (1996) (observing that Russians cannot draw on a common cultural understanding to lend meaning and legitimacy to constitutional guarantees of free speech and information); Stephen Holmes, Crime and Corruption After Communism, E. EUR. CONST. REV., Fall 1997, at 69, 69 (stating that a major obstacle to constitutionalism and the rule of law in postcommunist countries is “the interweaving of private-sector crime with public-sector corruption”); Andrew S. Levin, Civil Society and Democratization in Haiti, 9 EMORY INT'L L.
effects; to “on-the-ground,” village-to-village analyses of local governmental processes.

2. Policy and Practice

Consistent with the vast part of the law and development literature, the ideology of free-market democracy forms the theoretical core of today's international development policy and practice. This ideology is propagated by the two institutions wielding by far the greatest influence on the developing world—the World Bank and the International Monetary Fund—as well as by the United States Agency for International

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67. See, e.g., Jon Elster, Constitutional Courts and Central Banks: Suicide Prevention or Suicide Pact?, E. EUR. CONST. REV., Summer/Fall 1994, at 66 (arguing that establishing constitutional courts and central banks in Eastern Europe might undermine as well as protect democracy); Cass Sunstein, Against Positive Rights, E. EUR. CONST. REV., Winter 1993, at 35, 35-36 (criticizing the inclusion of social and economic rights in the new constitutions of postcommunist Europe); Laura Underkuffler-Freund, Property: A Special Right, 71 NOTRE DAME L. REV. 1033, 1045-46 (suggesting that the inclusion of social and economic rights in some developing country constitutions may be appropriate). Consider also the three-way discussion among Professors Horowitz, Linz, and Lipset on the merits of parliamentarism as opposed to presidentialism. Compare Donald L. Horowitz, Comparing Democratic Systems, J. DEMOCRACY, Fall 1990, at 73, 74 (noting that democratic parliamentarism in many developing countries has failed), with Juan J. Linz, The Perils of Presidentialism, J. DEMOCRACY, Winter 1990, at 51, 52 (suggesting that parliamentary systems are “more conducive to stable democracy” than are presidential systems), and Seymour Martin Lipset, The Centrality of Political Culture: The Virtues of Parliamentarism, J. DEMOCRACY, Winter 1990, at 80, 82-83 (emphasizing the importance of cultural factors to stable democracy).

68. See, e.g., Cynthia B. Schultz & Tamara Raye Crockett, Economic Development, Democratization, and Environmental Protection in Eastern Europe, 18 B.C. ENVTL. AFF. L. REV. 53, 53, 62-63 (1990) (arguing that democratization in Eastern Europe has heightened concern for environmental protection, which in turn has fostered democratization); Emily Stoper & Emilia Ianeva, Democratization and Women's Employment Policy in Post-Communist Bulgaria, 12 CONN. J. INT'L L. 9, 10 (1996) (suggesting that democratization is unlikely to have a significant impact on women's employment policies in Bulgaria).


70. Cf. Unger, supra note 2 (manuscript at 3) (referring to the prevailing “neoliberal program” and “its defining belief in convergence toward a single system of democratic and market institutions”); Peter L. Berger, The Uncertain Triumph of Democratic Capitalism, in CAPITALISM, SOCIALISM, AND DEMOCRACY REVISITED, supra note 17, at 1, 8 (describing the current “triumphalism among those who believe in democracy and capitalism”).

71. See, e.g., SUSAN GEORGE & FABRIZIO SABELLI, FULL FAITH AND CREDIT: THE WORLD BANK'S SECULAR EMPIRE 2, 4, 8-9, 13, 19 (1994) (stating that the World Bank's structural
Development (USAID),\textsuperscript{72} the Asian Development Bank,\textsuperscript{73} the Ford Foundation,\textsuperscript{74} the Soros Foundation,\textsuperscript{75} the United Nations Development Programme,\textsuperscript{76} the American Bar Association's Central and East European Law Initiative,\textsuperscript{77} and a host of new private or quasi-private organizations with names like "The Institute for Public-Private Partnerships"\textsuperscript{78} or "The Democracy Development Initiative."\textsuperscript{79} Moreover, many academics involved in the developing world are working in some capacity to promote markets\textsuperscript{80} or democracy.\textsuperscript{81} Even law students are marketizing: The adjustment loans have re-oriented entire economies toward individualistic, free-market "Reaganomics"; Law and Development in Crisis, in LAW AND CRISIS IN THE THIRD WORLD, supra note 36, at 1-2 (criticizing the hypocrisy and imperialism hidden in the orthodoxy of liberal democracy championed by the IMF and the World Bank); DANI RODRIK, KING KONG MEETS GODZILLA: THE WORLD BANK AND THE EAST ASIAN MIRACLE I (Centre for Econ. Pol'y Res. Discussion Paper No. 944, 1994) (noting that as "the world's leading multilateral lending institution, the World Bank has advocated, at least since the late 1970s, a minimalist role for the government"); Offe, supra note 3, at 65 (suggesting that in Eastern Europe "Western"-style markets and democracy were presented as preconditions for assistance and cooperation from multilateral organizations such as the European Union, NATO, and the IMF).

72. See Asian Development Bank, A Periodic Summary of Law-Related Projects in the Asia-Pacific Region, Conducted by the Bank and by Other Multilateral Institutions, Bilateral Assistance Institutions, Academics and the Private Sector, LAW DEV. BULL., Nov. 1997, at 6, 15-17, 53, 59-60, 87-88, 90, 97-98 (describing programs sponsored by USAID).

73. "The [Asian Development] Bank's principal focus is on working with [developing member countries] seeking to develop or liberalize market economies. . . ." Barry Metzger, Emerging Trends and Issues in Legal and Judicial Reform in Asia—Perspectives and Programming at the Asian Development Bank, Remarks at the Proceedings of the Roundtable Meeting of Chief Justices and Ministers of Justice (Aug. 25, 1997), in LAW & DEV.: SEMINAR PROC., 1997, at 8, 13. While the Bank has promoted judicial reform, its motivation (at least ostensibly) has been economic—and not political—in character. See id. at 8-11 (describing the economic orientation of recent legal and judicial reforms supported by the Bank); see also Asian Development Bank, supra note 72, at 19-20, 41-43, 72-74, 80-82, 88-89 (describing Bank-sponsored marketization projects in China, India, Lao People’s Democratic Republic, Mongolia, and Nepal).


75. See SOROS, supra note 1, at 6-10.

76. See Asian Development Bank, supra note 72, at 13, 36-37, 113-15.


78. See Michael F. McLindon, PRIVATIZATION AND CAPITAL MARKET DEVELOPMENT: STRATEGIES TO PROMOTE ECONOMIC GROWTH at xviii (1996).


80. Scholars regularly participate (for example, through CEELI) in the process of drafting market-oriented laws. See, e.g., ABA (CEELI), ANALYSIS OF THE DRAFT LAW ON FOREIGN INVESTMENT FOR THE FEDERATION OF BOSNIA AND HERZEGOVINA (June 1, 1995); ANALYSIS OF NIZHNY NOVGOROD INVESTMENT LAW, supra note 6. In addition, a growing number of academics, often in conjunction with institutions such as the Ford Foundation or the Soros Foundation, advise developing governments on the development of transitional market mechanisms. See, e.g., FRYDMAN ET AL., supra note 61, at x-xiii.
government of Estonia recently asked six Georgetown law students and
their professors "to help determine what types of laws are required to start a
free-market system." 82

Additionally, unlike in the 1960s and 1970s, the field of law and
development today is shaped significantly by legal practitioners. There is
no question that practitioner-structured market interventions such as
privatization (frequently of telecommunications enterprises or major
utilities),83 cross-border offerings,84 or international mergers and joint
ventures85 are having a tremendous impact on the economic landscape of
many developing and transitional countries. Indeed, because international
business transactions often mean potential profits in the order of hundreds
of millions of dollars86—often much more than multilateral lending
institutions can offer—practicing lawyers wield decisive influence over
developing governments.

D. The Problem in the Current Paradigm

Despite frequent claims of "new paradigms"87 and "lessons learned,"88
prevailing law and development orthodoxy recapitulates a basic and

81. For example, law professors frequently assist in drafting constitutional provisions, see
LUDWIKOWSKI, supra note 7, at 2-3, and in training judges, lawyers, and government officials in
developing countries, see Belcuore, supra note 79, at 461-62, 464-65; Stein, supra note 77, at 101.
82. Brooke A. Masters, GU Legal Eagles Flying to Estonia's Aid, WASH. POST, June 18,
1992, at D3. Reportedly, some of the students had "never studied antitrust law, the area they
[we]re summarizing for the Estonians. 'We look with a fresh eye, so we're suggesting things that
are not necessarily American or European,' said one student." Id. The Georgetown-Estonia
project was funded by the U.S. Commerce Department's Commercial Law and Development
Program for Eastern Europe. See id.
83. The landmark privatization of Teléfonos de México (Telmex), for example, was
structured and conducted in significant part by two Wall Street law firms, Cleary, Gottlieb, Steen
& Hamilton and Sullivan & Cromwell, working together together with Goldman, Sachs, Mexican
government officials, and local Mexican counsel. See Prospectus of Teléfonos de México, S.A. de
privatize the national telephone companies of Argentina and Venezuela. See Susan Beck, Big
Deals: International, AM. LAW., Mar. 1992, at 44; Susan Carter & Craig Leon, Foreign
84. See, e.g., Richard Forster & Robert Dwyer, Linklaters Takes Lead as Firms Build for the
Future, 16 INT'L FIN. L. REV. 21, 24 (1997) (describing recent cross-border securities offerings in
Russia and Eastern Europe).
85. See, e.g., John J. McKenna, North American Firms Compete for Latin American
Investments, OIL & GAS J., Feb. 23, 1998, at 26, 26-27 (describing the recent wave of joint
venture and merger-and-acquisition activity in the Latin American energy sector).
86. See Carter & Leon, supra note 83, at S20; Forster & Dwyer, supra note 84, at 21-28;
McKenna, supra note 85, at 26.
87. See, e.g., THE WORLD BANK GROUP, supra note 2, at 10 (stating that "[a] new
development paradigm has emerged, one that emphasizes market friendly approaches and stresses
the importance of private sector development").
Perspective, 60 FORDHAM L. REV. S23, S31-S32 (1992) ("The present interest in privatization is
no fad... Lessons have been learned... and today's strategies reflect these lessons.").
potentially fatal error of the earlier movement. It ignores ethnicity and ethnic conflict in the developing world. To be sure, ethnic conflict figures prominently in the human rights area, particularly in the context of war crimes. But the distinctive, structural relationship between ethnicity and today's marketization and democratization efforts has been almost completely overlooked by all lawyers and legal scholars involved in the developing world, including those in the human rights area.

Why this has been so is itself fascinating. Practitioners probably view ethnic tensions as lying far beyond the scope of their responsibility. Law and economics scholars involved in marketization also tend to treat ethnic conflict as beyond the scope of their analyses; although all behavior can be described as preference-maximizing in a tautological sense, the "preferences" and behaviors associated with ethnic hatred escape the kind of rationality assumed in most economic models. Moreover, Western discomfort with potentially invidious ethnic generalizations may go a long way toward explaining the neglect of the ethnic dimensions of markets and democracy in the developing world.

For whatever reason, today's dominant law and development orthodoxy regards ethnic conflict as just another aspect of underdevelopment, which the universal prescription of markets and democracy is supposed to cure. This Article challenges the prevailing orthodoxy. The particular ethnic dynamics of many postsocialist and developing countries introduce deep

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91. See generally ANTHONY KRONMAN, THE LOST LAWYER (1993) (lamenting the narrow technical focus of most practicing lawyers); WILLIAM H. SIMON, THE PRACTICE OF JUSTICE 8-9 (1998) (suggesting that the prevailing approach to lawyers' ethics severely restricts the range of factors that lawyers may consider in decisionmaking).

92. In a related vein, Professor Mark Roe has observed that law and economics analysis tends to be "American-centered" to the extent that it ignores the "risk of institutionally-induced turmoil" and backlash present in less politically stable countries. Mark J. Roe, Backlash, 98 COLUM. L. REV. 217, 217-20, 239 (1998).

93. Most economic models assume maximization of economic value by individuals whereas "[i]n fact both state officials and social actors may be motivated by ends which are primarily non-economic such as racism or ethnicity." Mushtaq H. Khan, Patron-Client Networks and the Economic Effects of Corruption in Asia 10 (Winter 1997) (unpublished manuscript, on file with The Yale Law Journal); see also Richard H. McAdams, Cooperation and Conflict: The Economics of Group Status Production and Race Discrimination, 108 HARV. L. REV. 1003, 1007-08 (1995) (suggesting that current economic theory focuses insufficiently on group loyalty and group identity and thus "fails to predict the prevalence of cooperation and conflict in human affairs").

94. Even among the relatively few left-wing law and development scholars who still challenge the orthodoxy of free-market democracy, ethnicity tends to be neglected in favor of class-based analyses. See Hetne, supra note 41, at 15 (observing that for Marxists concerned with development issues ethnic mobilization is usually described "as a class struggle in disguise"). For a more nuanced view of the relationship between ethnicity and class that still suggests the ultimate centrality of class conflict, see UNGER, supra note 2 (manuscript at 103-08).
tensions into the very project of marketization and democratization. These tensions, if left unaddressed, threaten to undermine the long-term success of the development project.

III. UNDERDEVELOPMENT AND OVERACHIEVEMENT

This Part will explore the ethnoeconomics of the developing world and highlight the prevalence of economically dominant ethnic minorities throughout South and Southeast Asia, Africa, the Caribbean, Latin America, and parts of the former Soviet Union. The reasons for, and the circumstances surrounding, the economic dominance of these minority groups at either the national or regional level vary enormously. In particular, some groups may be economically dominant but not market-dominant. That is, some groups may owe their economic dominance, in part or in whole, not to superior “entrepreneurialism” but rather to factors that will not persist under market conditions. The distinction between market-dominant minorities and minorities that are not market-dominant lies at the heart of the model developed in Part IV.

A. Ethnoeconomics in the Developing World

Although legal scholars almost never acknowledge the phenomenon, historians and sociologists of the developing world long have recognized the presence of one or more ethnic minorities who historically have dominated economically the “indigenous” majorities around them. These minorities may be found in virtually every part of the developing world.

For example, although Chinese affluence in Southeast Asia is well known, the persistence and extent of their economic power remain startling. In Indonesia, the Chinese represent less than five percent of the population but control “an estimated 70 percent of the country’s private domestic capital and run three-quarters of its 200 largest businesses.” In Thailand, the Chinese minority, roughly ten percent of the population, historically has dominated the country’s major economic sectors, including all of the country’s largest private banks. Moreover, “[o]f the five billionaires in Indonesia and Thailand in the late twentieth century, all were ethnically Chinese.” In Malaysia, the relatively large Chinese minority (roughly thirty-two percent of the population’) historically dominated the country’s manufacturing, mining, retail trade, transportation, and communications sectors and still account “for the bulk of private economic activity in Malaysia, despite discriminatory laws aimed at limiting their clout.” In the Philippines, the ostensibly “aggressive” Chinese (only about two percent of the population) reportedly control almost forty percent of the corporate economy, including the country’s four major airlines. For centuries, the Chinese minority dominated small-scale industry in Laos and retail trade in Vietnam and Cambodia. In the southern part of Vietnam, the Chinese owned “80 percent of all capital invested in the manufacturing of textiles, iron and steel, and chemical and allied products” as late as 1974. Today, as discussed further in Part V,

96. See, e.g., Dominique Turpin, Challenge of the Overseas Chinese, FIN. TIMES, Feb. 6, 1998, at 8 (stating that “experts are unanimous that the overseas Chinese dominate medium- and large-scale corporate capital in all Asian markets except for Japan and Korea”).


98. See GOLAY ET AL., supra note 95, at 289; SOWELL, supra note 97, at 176; see also JAMES C. INGRAM, ECONOMIC CHANGE IN THAILAND 1850-1950, at 36-37, 55-57 (1971) (explaining that apart from rice cultivation, “an ancient and honorable occupation to the Thai,” the Thais left most entrepreneurial functions to the Chinese).

99. SOWELL, supra note 97, at 176 (citing JOEL KOTKIN, TRIBES: HOW RACE, RELIGION, AND IDENTITY DETERMINE SUCCESS IN THE NEW GLOBAL ECONOMY 180 (1993)).

100. See WORLD ALMANAC AND BOOK OF FACTS 796 (Robert Famighetti ed., 1997).


104. See TRAN KHANH, THE ETHNIC CHINESE AND ECONOMIC DEVELOPMENT IN VIETNAM 20-21 (1993); SOWELL, supra note 95, at 211 (“[The Chinese] owned approximately 70 percent of small-scale industry in Laos and conducted more than 70 percent of the retail trade in Vietnam and Cambodia.”).

105. SOWELL, supra note 97, at 211 (footnote omitted); see KHANH, supra note 104, at 20-21.
economic liberalization in Vietnam has led to a resurgence of Chinese commercial dominance in the country’s urban areas.106

The Chinese are not the only economically dominant minority in Asia. In Cambodia, the Vietnamese, who historically were viewed as more “frugal,” “industrious,” and trade-oriented than the Khmers, dominated certain skilled occupations.107 In Burma, colonial laissez-faire policies led to the disproportionate prosperity of the Indian minority relative to indigenous Burmese; together with the British and (to a lesser extent) the Chinese, the Indian minority dominated Burma’s commercial sphere until the 1960s.108 In Sri Lanka, the Ceylon Tamils, historically more educated, prosperous, and “advanced” than the Sinhalese majority, dominated both the economic and political spheres until the mid-1950s.109 In Bombay, capital of the western Indian state of Maharashtra, “clever and very hardworking” South Indian “outsiders” traditionally dominated the powerful private sector vis-à-vis the Maharashtryans.110 In the Telangana region of India, the Telanganas were “no match” for the better-educated, “clever and cunning” people of the coastal Andhras.111 In Assam, an oil-rich state in northern India, Bengali immigrants (now roughly forty percent of the population) historically have dominated commerce, professions, and, until a recent wave of ethnic reprisals, government bureaucracy.112

Moreover, this phenomenon is replicated throughout the countries of Africa, where entrepreneurial “pariah” (non-African) minorities113 coexist

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106. See infra text accompanying notes 590 & 610-611.
110. HOROWITZ, supra note 10, at 173-74 (citations omitted); see id. at 170; MARY FAINEZ KATZENSTEIN, ETHNICITY AND EQUALITY: THE SHIV SENA PARTY AND PREFERENTIAL POLICIES IN BOMBAY 17-18, 30, 33 (1979).
111. HOROWITZ, supra note 10, at 167, 673-74 (citations omitted); see MYRON WEINER, SONS OF THE SOIL: MIGRATION AND ETHNIC CONFLICT IN INDIA 236-43 (1978). Telangana and coastal Andhra are both regions in the state of Andhra Pradesh. See WEINER, supra, at 221.
113. Since Vasco da Gama’s time, Indians have dominated the economies of Kenya, Tanzania, Uganda, and other East African countries. See MANGAT, supra note 95, at 1-9, 21-23, 63-96; H.S. MORRIS, THE INDIA NS IN UGANDA 139-40 (1968); David Himbara, The Failed Africanization of Commerce and Industry in Kenya, 22 WORLD DEV. 469, 470-71 & tbl.1 (1994). Similarly, since French colonial rule, the Lebanese have dominated many of the local economies of West Africa. See Neil O. Leighton, Lebanese Emigration: Its Effect on the Political Economy of Sierra Leone, in THE LEBANESE IN THE WORLD, supra note 95, at 579, 598-99; R. Bayley Winder, The Lebanese in West Africa, in IMMIGRANTS AND ASSOCIATIONS 103, 105, 110-13 (L.A. Fallers ed., 1967). Today, for example, the Lebanese dominate Sierra Leone’s diamond,
with economically dominant African minorities,\textsuperscript{114} and in the Caribbean and the West Indies.\textsuperscript{115} Latin America presents a slightly more complicated picture.\textsuperscript{116} Although the social hierarchy in Latin America is usually thought of in class terms, sociologists long have observed the existence of a “pigmentocracy”: that is, a social spectrum with taller, lighter-skinned, Spanish-blooded aristocrats at one end, shorter, darker, Indian-blooded masses at the other end, and a great deal of “passing” in between.\textsuperscript{117} Thus, gold, finance, construction, real estate, and retail industries and “control access to much international capital in their role as agents and brokers.” Leighton, supra, at 600.

\textsuperscript{114} The tendency of some African ethnic groups to dominate over others economically can be seen at both the regional and national levels. For example, throughout northern Nigeria, members of the Ibo minority historically dominated the local urban economies. See Robert Melson & Howard Wolpe, Modernization and the Politics of Communism: A Theoretical Perspective, in NIGERIA: MODERNIZATION AND THE POLITICS OF COMMUNALISM 1, 8-9 (Robert Melson & Howard Wolpe eds., 1971). In Uganda, the Baganda dominated economically over the rest of the country even before the British employed them to help rule the country. See Horowitz, supra note 10, at 163-64; Mahmood Mamdani, Politics and Class Formation in Uganda 29-34, 41-44, 120-22 (1976); Bill Berkeley, An African Success Story? (Uganda), ATLANTIC MONTHLY, Sept. 1994, at 22. In Kenya, the Kikuyu historically constituted (together with the Indians) most of the country’s elite capitalist class. See Michael Chege, The Political Economy of Agrarian Change in Central Kenya, in THE POLITICAL ECONOMY OF KENYA 93, 98-99 (Michael G. Schatzberg ed., 1987); Himbara, supra note 113, at 476. In Rwanda, the Tutsi minority was the economic elite vis-à-vis the Hutu majority during Belgian colonial rule, and possibly much earlier. See Gérard Prunier, THE RWANDA CRISIS: HISTORY OF A GENOCIDE 26-45 (1995). The widespread perception that Tutsis were “always” economically dominant may reflect “cultural mythology” rather than historical fact. Id. at 40; see also René Lemarchand, BURUNDI: ETHNICIDE AS DISCOURSE AND PRACTICE 164 (1994) (discussing the “taboo” issue of Tutsi economic dominance in Burundi).

\textsuperscript{115} In the Dominican Republic, Haiti, Jamaica, and Trinidad, the Lebanese minority tended to prosper disproportionately when “left alone to make money” and continue today to dominate these countries’ commercial and industrial spheres. David Nicholls, Lebanese of the Antilles: Haiti, Dominican Republic, Jamaica, and Trinidad, in THE LEBANESE IN THE WORLD, supra note 95, at 339, 351-54, 359. In Guyana and Trinidad, Indians originally brought over to labor in sugar plantations generally outperform their Creole counterparts in trade and commerce despite repeated backlashes. See Vasil, supra note 101, at 237-38, 248-52. In Fiji, the professional and commercial dominance of the Indian (and to a lesser extent, the Chinese) vis-à-vis the indigenous Fijians is “staggering.” Id. at 196; see also id. at 196-97 tbls.7-9 (citing wealth and income statistics compiled by the Fijian government).

\textsuperscript{116} In contrast to Southeast Asia and Africa, intermarriage among ethnic groups (as well as concubinage and polygamy) has been common in Latin America since the colonial era. See Magnus Mörner, Race Mixture in the History of Latin America 25-26 (1967); Chua, supra note 18, at 271-72. Indeed, perhaps “[n]o part of the world has ever witnessed such a gigantic mixing of races...” Mörner, supra, at 1.

\textsuperscript{117} Throughout Spanish America, the so-called sociedad de castas was created by transferring to the New World the hierarchic, estate-based corporative society of late medieval Castile and imposing that society upon a multiracial, colonial situation. This colonial reality was characterized, first, by the dichotomy between conquerors and conquered, masters and servants or slaves, and, second, by miscegenation between these opposite groups. Hence it was inevitable that social stratification and social status would become closely related to the division into ethnic groups. The location of the existing ethnic groups within the hierarchic social structure gave rise to what a Chilean student has ingeniously called “pigmentocracy.” People were classified in accordance with the color of their skin, with the white masters occupying the highest stratum.
as I have argued elsewhere, the phenomenon of an economically dominant, ethnically distinguishable minority—here, the white, landowning, Western-educated elite—is an important feature of many Latin American societies.\footnote{Mörner, infra note 116, at 54 (citations omitted) (emphasis added); see also Marvin Harris, Patterns of Race in the Americas 38 (1964) (noting that in most Latin American societies “Caucasoid” features were historically “preferred by all strata of the dominant caste; hence the more Indian-looking the less desirable the mestizo type”).}

Central Asia is another developing region in which at least one ethnic minority historically has been economically dominant vis-à-vis the indigenous majority around them. In the vast region that today includes the post-Soviet republics of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan, large waves of Russians (and to a lesser extent Germans and Ukrainians) arrived “either in the late tsarist period, in the 1920s and 1930s, or during the Virgin Lands period under Khrushchev.”\footnote{See Chua, infra note 18, at 271-79. This phenomenon in Latin America is quite stark in countries with significant Indian populations—for example, Bolivia, Mexico, Peru, and most Central American countries—and much more muted in relatively “Europeanized” countries such as Argentina, Chile, and Venezuela, which have smaller (and in some cases, negligible) Indian populations and which saw “enormous waves” of immigrants from Europe early this century. Mörner, infra note 116, at 133-34; see Harris, infra note 117, at 97-98; Chua, supra note 18, at 277-78.}

For reasons including tsarist-era repression of the Central Asian “half-savages,”\footnote{Karen Dawisha & Bruce Parrott, Russia and the New States of Eurasia: The Politics of Upheaval 81 (1994); see Martha Brill Olcott, Nation Building and Ethnicity in the Foreign Policies of the New Central Asian States, in National Identity and Ethnicity in Russia and the New States of Eurasia 209, 213 (Roman Szporluk ed., 1994) [hereinafter National Identity and Ethnicity] (noting that Soviet authorities deliberately encouraged the immigration of ethnic Russians and other non-Asians to Central Asia in order to slow the rise of local nationalism).} Soviet economic policies that were “ostensibly internationalist, but evidently Russocentric,”\footnote{Martha Brill Olcott, The Kazaks 51, 58-69, 75, 90, 110 (1987); see also Central Asia 170 (Edward Allworth ed., 3d ed. 1994) (quoting tsarist official on Russia’s “civilizing role in Central Asia”).} the

\footnote{Ronald Suny, State, Civil Society, and Ethnic Cultural Consolidation in the USSR—Roots of the National Question, in From Union to Commonwealth 22, 27 (Gail W. Lapidus et al. eds., 1992). Soviet policies often favored the needs of the “center” (Moscow) above those of the “periphery” and the interests of local Russian minorities over those of the titular majorities. See Olcott, supra note 120, at 248. Thus, Moscow’s policy was to use resource-rich Central Asia as a kind of contiguous Third World that mined and grew raw materials but did not process them. Although Uzbekistan, Kazakhstan, and, to a lesser extent, Kyrgyzstan all had industrial sectors, these tended to be extraction industries rather than manufacturing ones. They also remained overwhelmingly in Russian and European hands, particularly at the administrative level. Olcott, supra note 119, at 213.}

\footnote{Many of the Central Asian peoples were historically nomadic, such as the Kazaks, the Kyrgyz, and Turkmens. See, e.g., Central Asia, supra note 120, at 10, 47. Other Central Asian tribes had sedentary cultures: The Uzbeks, together with the urban Tajiks, are heirs of the ancient sedentary civilization of the mixed Turkic-Iranian population known before the revolution as “Sarts.” Oasis cities of present-day Uzbekistan like Samarkand and}
Russian-speaking minorities in Central Asia dominated the most advanced, prestigious, and lucrative sectors of the economy for two centuries.123

Today, despite accelerating rates of Russian emigration after 1989, Russians constitute roughly thirty-seven percent of the population in Kazakhstan; twenty-one percent in Kyrgyzstan, nine percent in Turkmenistan, and eight percent in Uzbekistan.124 As elsewhere in the former Soviet Union, the Russian minorities in Central Asia remain predominantly urban, not just at the republic level but also in all subordinate territorial units.125 Moreover, in many of the Central Asian republics, Russians still predominate in communications, construction, engineering, electronics, industry, science, transportation, and the new information-computing services sector.126 Nevertheless, whether the historical economic dominance of the Russian minorities in Central Asia will persist under the new, post-Soviet regimes is highly questionable and will be discussed specifically in the context of Kazakhstan in Part V.127

Bukhara ... became an integral part of the burgeoning Islamic civilization that extended from India in the east to North Africa and Spain to the west. James Critchlow, The Ethnic Factor in Central Asian Foreign Policy, in NATIONAL IDENTITY AND ETHNICITY, supra note 119, at 266, 274.


125. See YURIY KULCHIK ET AL., CENTRAL ASIA AFTER THE EMPIRE 20-22 (1996). Among Russians, 77% are urban dwellers in Kazakhstan, 70% in Kyrgyzstan, and up to 94%-97% in Turkmenistan and Uzbekistan. See id. at 16.

126. See VALERY TISHKOV, ETHNICITY, NATIONALISM AND CONFLICT IN AND AFTER THE SOVIET UNION 121-22, 125 (1997); Kaiser, Nationalizing the Work Force, supra note 123, at 94, 95 tbl.4, 103 tbl.9.

127. Throughout Central Asia, the Uzbeks, who form a significant minority in most of the other Central Asian countries, see DAWISHA & PARROTT, supra note 119, at 85-86; Kaiser, Ethnic Demography, supra note 123, at 256-58, have tended to be more prosperous than the majorities around them. See, e.g., JEFF CHINN & ROBERT KAISER, RUSSIANS AS THE NEW MINORITY 229 (1996) (noting that Uzbeks in the Osh Oblast were “an economically privileged group locally”); Eugene Huskey, Kyrgyzstan: The Politics of Demographic and Economic Frustration, in NEW STATES, NEW POLITICS: BUILDING THE POST-SOVET NATIONS 654, 661 (Jan Bremmer & Ray Taras eds., 1997) (explaining that in contemporary Kyrgyzstan, for example, Uzbeks in the Osh region are far wealthier than the Kyrgyz, and as of 1990 “controlled, according to one estimate, 80 percent of the city’s trade”). See generally Margaret Shapiro, Kirgizstan: New Freedom amid Poverty, WASH. POST, Apr. 4, 1992, at A17 (describing economic conditions and reform measures in Kyrgyzstan). Meanwhile, in Uzbekistan, the Crimean Tartar and Meskhetian Turkish minorities have historically been disproportionately prosperous vis-à-vis the Uzbek majority. See Christie Davies, Politics of Envy Taking Root in Ex-Soviet States, STRAITS TIMES (Singapore), Nov. 16, 1992, at 22. Finally, the relatively small Korean minorities in many Central Asian
B. Ethnoeconomics in the Developed World

The prevalence and visibility of economically dominant minorities in developing countries starkly distinguishes the problems of ethnic conflict in the developing and developed worlds. While some ethnic minorities in the United States have outperformed other ethnic minorities—and by some measures have outperformed the “white” majority—the U.S. economy is not dominated by any ethnic minority. On the contrary, the core ethnic problem in the United States is one that pits an economically and politically dominant white majority against economically and politically weaker ethnic minorities. As a result, democracy poses no radical threat to an economically dominant ethnic group in the United States. The same is true throughout the industrialized West.

countries also have tended to be more entrepreneurial and more economically successful than the indigenous majorities around them. See id.


129. As of 1995, the median household income in the United States was $32,960 for whites, $19,533 for blacks, $22,886 for Hispanics, and $38,347 for Asian/Pacific Islanders. See BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 1995, at 472 (1995). The percentages of households in the above categories with monetary incomes exceeding $100,000 are 6.3%, 1.9%, 2.3%, and 9%, respectively. See id.

130. See id. As I have already noted, there is a certain artificiality inherent in the ethnic categories generally accepted in the United States. See supra note 11 and accompanying text.

131. See Erik Hurst et al., The Wealth Dynamics of American Families, 1984-94, in 1 BROOKINGS PAPERS ON ECONOMIC Activity 267, 293, 295 fig.3, 306-09, 307 tbl.19, 308 tbl.20 (1998); see also MEVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY 1-2, 5, 7 (1995) (focusing on wealth rather than income to demonstrate that “whites and blacks constitute two nations” with blacks forming “the sediment of the American stratificational order”).

132. As has long been observed, democracy is always in a sense potentially inimical to the interests of a wealthy minority. Thus, David Ricardo was willing to extend suffrage only “to that part of [the people] which cannot be supposed to have an interest in overturning the right of property.” STEFAN COLLINI ET AL., THAT NOBLE SCIENCE OF POLITICS 107 (1983) (citation omitted). Similarly, for Marx “private property and universal suffrage [were] incompatible.” Adam Przeworski, The Neoliberal Fallacy, in CAPITALISM, SOCIALISM, AND DEMOCRACY REVISITED, supra note 17, at 39, 47 (citation omitted). In fact, however, in developed countries such as the United States and the countries of Western Europe, democracy has not proved a radical threat to markets. On the contrary, democracy throughout the industrialized West generally has coexisted robustly with markets, though qualified, to be sure, by redistributive institutions such as progressive taxation and social welfare. See Geoffrey Garrett, Global Markets and National Politics: Collision Course or Virtuous Circle?, 52 INT’L ORG. (forthcoming Fall 1998) (manuscript at 31, on file with The Yale Law Journal) (concluding that in the OECD countries the coupling of global markets with domestic spending and wealth redistribution has proved a stable, “robust and desirable solution”); Przeworski, supra, at 47-48 (noting that “[t]here are 14 countries in the world today that have remained continuously capitalist and democratic for the past half-century”).

133. Because the categories employed in statistical research vary by country, the ethnoeconomic status of minority groups across Western countries resists direct comparison. For example, the United Kingdom tends to draw classifications along racial lines, whereas other European countries focus on the national origins of their immigrants. See STEPHEN CASTLES,
Likewise, and in striking contrast to Southeast Asia, economically dominant ethnic minorities do not exist in the more economically developed societies of East Asia. In each of the “Asian Tigers,” the ethnic majority—the Japanese in Japan, the Koreans in South Korea, and the Chinese in Hong Kong, Taiwan, and Singapore—is economically and politically dominant. The same is true of China where the Han majority (which constitutes ninety-five percent of the population) has dominated economically and politically over ethnic minorities like the Tibetans, Uighurs, and Miao for three millennia.

134. In Singapore, the Chinese constitute roughly 77% of the population, see 2 THE EUROPA WORLD YEARBOOK 2903 (38th ed. 1997) (citing Singapore’s 1990 census), and are an economically, politically, and culturally dominant majority vis-à-vis the country’s Indian and Malaysian minorities, see JOSEPH B. TAMNEY, THE STRUGGLE OVER SINGAPORE’S SOUL 20, 96-103, 187 (1996). In Japan and Korea, ethnic minorities are not merely economically disadvantaged, but practically nonexistent. See 1996 Britannica World Data, in ENCYCLOPEDIA BRITANNICA, 1996 BRITANNICA BOOK OF THE YEAR 638, 646 (Glenn M. Edwards ed., 1996). In fact, it was only in 1997 that the Japanese formally acknowledged the existence of an indigenous ethnic minority, the Ainu. See Japanese Parliament Passes ‘Ainu’ Minority Rights Bill, AGENCE FR.-PRESSE, May 8, 1997, available in LEXIS, News Library, AFP File. In Hong Kong, the English and Chinese are both prosperous, but the numeric strength of the latter (who constitute 99.99% of the population, cf. WORLD ALMANAC AND BOOK OF FACTS, supra note 100, at 753), makes them the economically dominant group. See Angelica Cheung, HONG KONG HANDOVER, THE INDEPENDENT (London), July 1, 1997, at 18. In Taiwan, Han Chinese (including both the Taiwanese Chinese and the Mainland Chinese) constitute roughly 99% of the population, with non-Han aborigines (yuán-chú mín) composing the other one percent. Even if the Taiwanese (roughly 85% of the population) and the Mainlanders (14%) were viewed as distinct ethnic groups, the Mainlander “minority” is not economically dominant. See ALAN WACHMAN, TAIWAN: NATIONAL IDENTITY AND DEMOCRATIZATION 16-17 (1994).

135. See JOHN KING FAIRBANK, CHINA: A NEW HISTORY 23 (1992) (noting that over one billion Chinese trace their ancestry to the Han dynasty). This general statistic hides the fact that ethnic minorities represent a majority in autonomous regions such as Tibet and Xinjiang. See THOMAS HEBERER, CHINA AND ITS NATIONAL MINORITIES 93-94, 100 tbl.6.18 (1989) (showing that as of 1987 non-Han groups made up 95.4% and 61.4% of the total population of Tibet and Xinjiang, respectively).

136. See, e.g., HEBERER, supra note 135, at 19 (noting that although some non-Han peoples did subjugate the Han and establish their own dynasties, “it was primarily the Han who subjugated the other peoples and exacted tributes from them”). For the purposes of this Article, I will assume, along with most Sinologists, that the “Han” Chinese may be viewed appropriately as
C. *Economic Dominance and Market Dominance*

Why some ethnic groups dominate economically over others is a formidable topic that this Article cannot possibly address adequately. Although it is fashionable in some circles to attribute superior group economic performance primarily to genetics, the reasons for economic dominance clearly vary from context to context, and explanations taking account of historical and cultural factors show a far greater breadth of understanding. In any event, for purposes of this Article, the crucial question is whether a particular ethnic group in a particular country is *market-dominant*.

Not every economically dominant minority is a market-dominant minority. Some groups—such as Russians in Central Asia (and elsewhere in the former Soviet Union), Afrikaners in South Africa, and Spaniards in Latin America—originally installed themselves as colonizers, using military force and the powers of the state to ensure their own economic and political dominance over subordinate majorities. To the extent that these groups owe their economic dominance solely or principally to nonmarket factors, their historical economic dominance may not persist under competitive market conditions. On the contrary, marketization may dissipate their economic dominance by opening up opportunities to disadvantaged groups previously prevented from participating fully in the economy.

On the other hand, it is possible that decades of political control by an ethnic minority may itself give rise to market dominance. In South Africa, for example, whites today almost certainly are market-dominant (at least in the near to midterm future), but surely this is in significant part because they have relegated the black majority to inferior educational opportunities and generally inhumane conditions for the past fifty years.

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137. In a recent, controversial book, Richard Hermstein and Charles Murray argue that cognitive ability differs across ethnic groups, see *Richard Herrnstein & Charles Murray, The Bell Curve* (1994), that these differences are inheritable and attributable in significant part to genetics, see id. at 299-312, and that poverty in the United States is concentrated among those with low I.Q.s, see id. at 371.

138. See, e.g., *Claude S. Fischer et al., Inequality by Design: Cracking the Bell Curve Myth* (1996).


140. South Africa is discussed in greater detail infra Section V.A.
The form of economic dominance in the developing world most likely to indicate market dominance is that of noncolonizer, “entrepreneurial” minorities such as the Chinese, Indians, and Lebanese. It is often said that these “middleman” minorities are “culturally” predisposed to entrepreneurial success as a result of group differences in work habits, savings propensities, or attitudes toward education and commerce. Thus the Chinese in Southeast Asia (and elsewhere) are said to be driven by an “intense profit motive” relatively absent among Malays and Filipinos, the Vietnamese are “frugal,” “industrious,” and “inventive” compared to the supposedly more artistically oriented Cambodians; Indians in the Caribbean and throughout East Africa operate on tiny profit margins, live extremely cheaply, and are felt to be “single-mindedly devoted to work and accumulation.” Relatedly, a good deal of recent scholarship explains the success of Chinese, Indian, Korean, and Lebanese communities in terms of their solidarity and “social networking,” in contrast to the Thai, who, for example, “don’t trust one another” and “relate to one another only in a hierarchical way.” On this view, marketization in the developing world

141. As Professor Sowell has explained, “In one way or another, middlemen facilitate the movement of goods from the producer to the consumer, without necessarily physically producing anything themselves.” SOWELL, supra note 97, at 27. Examples “include retailers, ranging from pushcart peddlers to international merchants, and money-lenders, ranging from pawnbrokers and petty loan sharks to international financiers.” Id.

142. Since Max Weber’s classic essay, The Protestant Ethic and the Spirit of Capitalism, many social scientists have explored the relationship between cultural attitudes and economic success. Thus, in the 1950s, “Weber’s Protestant Ethic [was] modernized into David McClelland’s ‘achievement motivation’ as a precondition of progress and into Edward C. Banfield’s ‘amoral familism’ as an obstacle.” ALBERT O. HIRSCHMAN, RIVAL VIEWS OF MARKET SOCIETY 19 (1992). More recently, Thomas Sowell and others have observed that “[c]ultural attitudes toward commerce and industry have varied as much as attitudes toward education.” SOWELL, supra note 95, at 25. Professor Sowell also has noted elsewhere that “there must be some cultural difference between the middlemen and those they serve. Otherwise, each community or nation would supply its own middlemen.” SOWELL, supra note 97, at 27.


144. See HENRY KAMM, DRAGON ASCENDING: VIETNAM AND THE VIETNAMESE 24 (1996); Chou Meng Tarr, supra note 107, at 35. “Cambodians felt that they were culturally superior to the Vietnamese, particularly in the fields of art, craft, literature and music” and in Khmer language dismissed the Vietnamese “as lacking the capacity for the finer experiences of life.” Id.

145. HOROWITZ, supra note 10, at 170; see also SOWELL, supra note 97, at 318. Cultural distinctions have been drawn in Eastern Europe as well. The Estonians and Latvians, for example, are said to be especially hardworking (relative to Russians) because of their “Protestant work ethic.” Walter C. Clemens, Jr., Baltic Identities in the 1990s: Renewed Fitness, in NATIONAL IDENTITY AND ETHNICITY, supra note 119, at 185, 190.

146. LAWRENCE E. HARRISON, WHO PROSPERS? HOW CULTURAL VALUES SHAPE ECONOMIC AND POLITICAL SUCCESS 15 (1992); cf. JACQUES AMYOT, THE CHINESE AND THE NATIONAL INTEGRATION IN SOUTHEAST ASIA 80-81 (1972) (suggesting that the economic power of the Chinese in Thailand stems in large part from cohesive kinship ties and complex patterns of community associations); KOTKIN, supra note 99, at 206 (noting that the Sindhi diaspora “tends to ‘cling together’” while Jain diamond merchants “are very close and everyone knows...
almost certainly would be expected to further the economic dominance of these hardworking, capital-saving, “more cohesive and well organized” entrepreneurial groups.\textsuperscript{147}

This conclusion, however, may overemphasize greatly the economic—as opposed to the political—skills or savvy of so-called “entrepreneurial” groups. For example, the tremendous wealth of the Chinese in Southeast Asia may reflect good political connections and a “talent” for getting monopoly privileges from the state as much as superior commercial skills.\textsuperscript{148} At the same time, the success of Indian and Lebanese merchants in many African countries is often attributed to their allegedly corrupt and illicit government connections.\textsuperscript{149} A slightly different line of thought suggests that the success of all of these groups lies in the “divide-and-conquer” strategies of European colonizers, who ensured that economic control, to the extent that it was not monopolized by the colonizer, lay “with a politically impotent class of pariah [non-native] businessmen.”\textsuperscript{150}

To the extent that these political favoritism accounts are correct, it is by no means guaranteed that the developing world’s “entrepreneurial” minorities will continue to enjoy economic dominance under genuine competitive conditions.

Nevertheless, that certain ethnic minorities are better able than others to exploit the economic possibilities of political favoritism may not be fortuitous. If European colonial powers pursued a “divide-and-conquer” strategy in Southeast Asia and Africa, their decision to deal profitably with certain immigrant groups such as the Chinese or Indians surely had something to do with the fact that these groups had dominated trade there
long before the European colonizers arrived on the scene.\textsuperscript{151} Hence, the political favoritism explanation ultimately may beg the question and return the inquiry to cultural factors.

But cultural explanations also beg a more difficult question: Why do certain ethnic groups develop commercially advantageous cultural traits? Weber famously pointed to political exclusion as a potential explanation, noting that minorities excluded from positions of political influence "were driven with peculiar force into economic activity."\textsuperscript{152} More recently, rational choice theorists have attributed the economic success of certain "ethnically homogeneous middlemen groups" to the small size and social connectedness of these groups, which "give their members a unique means of (informally) sanctioning contract breaches by other group members."\textsuperscript{153}

It is not obvious whether these further explanations are sufficient. Numerous politically excluded minorities do not attain economic success. Likewise, there are plenty of numerically small ethnic groups that have not become successful middlemen.\textsuperscript{154} Resolving these issues is not necessary

\textsuperscript{151} In pre-colonial Indonesia, for example, all foreign trade in the [Tabanan] kingdom—the main export was coffee, the main import opium—was conducted by a single wealthy Chinese called a subandar, who held a royal monopoly in exchange for a suitable tribute, the remainder of the small resident Chinese population acting as his agents. Domestic trade was trifling.\textemdash\textemdash\textsuperscript{GEERTZ, supra note 95, at 25-26. Of course, this observation may be owing to Chinese imperialism in Southeast Asia, which antedates Western colonialism. See CHARLES O. HUCKER, CHINA'S IMPERIAL PAST 1 (1975). Similarly, in East Africa, Indian merchants as early as the second century A.D. functioned as "the principal suppliers of cotton cloth, beads, and sundry manufactured articles and as importers of ivory, gold, iron, gum copal, ambergris, incense." MANGAT, supra note 95, at 1.}


\textsuperscript{154} Indeed, it has been suggested that too high a degree of familial or clannish trust may in some contexts obstruct entrepreneurialism. See GEERTZ, supra note 95, at 131-32; KENNEDY, supra note 148, at 143. Francis Fukuyama argues that familial or clannish trust, while allowing the success of small, individual businesses, is actually an obstacle to economic success at the national level. See FRANCIS FUKUYAMA, TRUST: THE SOCIAL VIRTUES AND THE CREATION OF PROSPERITY 28-29 (1995). Fukuyama focuses instead on the importance of generalized social
here. For purposes of the model proposed in Part IV, the crucial question is whether the economic dominance of a given ethnic minority will tend to persist or even increase under marketization, no matter what the underlying explanation. 155

IV. MARKETIZATION, DEMOCRATIZATION, AND ETHNONATIONALISM: A MODEL

Drawing on historical evidence and a wide-ranging social science literature, this Part proposes a model to explore the consequences of pursuing markets and democracy under the following conditions: (1) economic underdevelopment; (2) severe ethnic divisions; (3) the presence of a market-dominant ethnic minority; and (4) the presence of an impoverished majority with claims to being the “true owners of the nation” (often by virtue of their supposed “indigenousness”). Section A below gives an overview of the model. Section B addresses the prevalence of the model conditions in the developing world. Section C discusses the outcomes predicted by the model if marketization and democratization are pursued in countries satisfying the model conditions and demonstrates that these outcomes are corroborated by historical evidence from throughout the developing world. Section D considers possible counterexamples—countries arguably satisfying the model conditions where markets and democracy have not produced the model outcomes—and notes certain factors that might complicate the model’s application in real-world cases. Finally, Section E highlights some general policy implications of the model, preparing the way for the model applications in Part V.

A. Overview

Suppose country X satisfies the model conditions. Suppose that the population of country X consists of two rival ethnic groups: a relatively impoverished ethnic majority (the Ms) and a market-dominant ethnic minority (the MDMs). Suppose, finally, that country X simultaneously pursues marketization and democratization. In these circumstances, three hypotheses can be advanced:

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155. In many developing countries, this question may be impossible to answer until marketization is actually in progress.
I. Notwithstanding possible slight absolute gains in the Ms’ economic position as a result of marketization, the MDMs’ economic dominance, coupled with the Ms’ continuing pervasive poverty, will provoke, maintain, or exacerbate intense ethnoeconomic resentment among the disadvantaged Ms.

II. With democratization, this ethnoeconomic resentment among the Ms will tend to be mobilized and transformed into a potent ethnonationalist movement dedicated to eliminating the MDMs’ economic dominance.

III. As a result, marketization and democratization in country X will be difficult, if not impossible, to sustain simultaneously. If all the model conditions are fully satisfied, powerful pressures will push X toward one or more of three basic outcomes: (1) an ethnically targeted antimarket backlash; (2) actions directed at eliminating the MDMs (e.g., atrocity or expulsion); or (3) a retreat from democracy.

Two points must be made before proceeding. First, in focusing on ethnic division, I am not trying to minimize the importance of class conflict or other potential lines of social division in developing countries. But in the developing world, ethnicity has played a much greater role within class conflict than social theorists generally have recognized. Moreover, in the last several decades, ethnicity has been a far more fertile source of political mobilization and mass conflict than has either class or religion.

156. If marketization produced tremendous and rapid economic gains among the Ms, then X would no longer satisfy model conditions one (economic underdevelopment) and four (presence of an impoverished majority). This happy but extremely unlikely possibility is discussed further below. See infra text accompanying notes 204-205.

157. As discussed further below, by “antimarket backlash” I am not referring to after-market redistributions, such as progressive taxation or welfare programs, but rather to ethnically targeted, direct interventions into actual market functions—for example, through ethnically targeted nationalizations or ethnically based restrictions on commercial activity. See infra text accompanying notes 248-275.

158. The extent to which this is true obviously varies. For example, the role of ethnicity is relatively small in “Europeanized” Latin American countries such as Argentina or Uruguay. The model accounts for such variation through the model conditions.

159. See HOROWITZ, supra note 10, at xi, 105-06 (observing that “[e]thnicity is at the center of politics in country after country” and that “ethnic affiliations generally seem to elicit more passionate loyalty than do class allegiances”); Frye, supra note 33, at 599 (noting that in the attempted transitions to democracy in Czechoslovakia, Spain, the Soviet Union, and Yugoslavia, ethnicity was “politiciated to a much greater degree than class or religion”). The interrelationship among ethnicity, religion, and class is complex and beyond the scope of this Article. Suffice it to say here that religion is one of many factors that may shape ethnic identity. See Hettne, supra note 41, at 17. Moreover, “[e]thnicity may overlap with class, in which case the result will be an enforcement of class consciousness. Ethnicity may also cut across class, in which case the effect on class consciousness may be the opposite.” Id. at 17.
Second, neither the model nor the hypotheses depend on any particular theory about why ethnic conflict occurs. Specifically, I am not arguing that economics in general, or economically dominant minorities in particular, are at the root of ethnic animosity. Indeed, the model presupposes the presence of severe ethnic divisions. Furthermore, I am not suggesting that democracy is necessary (or more likely than authoritarianism) to trigger an ethnonationalist reaction. Rather, the point of the model is that in developing countries where a market-dominant ethnic minority is present, democracy can proceed only in deep tension with markets. Instead of reinforcing the market’s efficiency and wealth-producing effects, democratization in such cases ordinarily will lead to powerful majoritarian, ethnonationalist pressures. If such ethnonationalism becomes sufficiently potent, one or more of the three hypothesized outcomes likely will occur.

B. Definition and Prevalence of Model Conditions

The model’s first condition—economic underdevelopment—occurs in all developing countries by definition. Condition two—severe ethnic divisions—refers to societies where powerful ethnic allegiances and rivalries “permeate organizations, activities, and roles to which they are formally unrelated,” and capital, labor, political parties, and many other sectors of social life “are often organized along ethnic lines.” This

160. Just as there are many competing conceptions of ethnicity, see supra note 31, there are numerous theories of ethnic conflict. Cultural pluralist theories focus on the clash of mutually incompatible values among culturally divergent groups. See, e.g., J.S. FURNIVALL, COLONIAL POLICY AND PRACTICE 303-12 (1948); M.G. Smith, Institutional and Political Conditions of Pluralism, in PLURALISM IN AFRICA 27, 38, 53-54 (Leo Kuper & M.G. Smith eds., 1969). By contrast, modernization and economic-interest theories stress group competition over resources and opportunities, often highlighting the role of elites in fomenting conflict. See, e.g., Robert H. Bates, Ethnic Competition and Modernization in Contemporary Africa, 6 COMP. POL. STUD., 457, 457, 468-71 (1974); Bonacich, supra note 95, at 589; Melson & Wolpe, supra note 114, at 1-10; infra note 211 (discussing different views of ethnic mobilization). Other well known theories of ethnic conflict do not fit into either of these categories. See, e.g., HOROWITZ, supra note 10, at 139-40 (critiquing both the cultural pluralist and modernization and materialist perspectives and advocating a more inclusive theory of ethnic conflict); SMITH, supra note 10, at 5-6 (proposing “a broad socio-historical approach” to understanding the modern ethnic revival). For an excellent collection of essays analyzing ethnic conflict in developed as well as developing societies, see ETHNICITY: THEORY AND EXPERIENCE, supra note 19.

161. Theories of economic determinism that ascribe all or most ethnic conflict to economic causes generally have been discredited: “To argue, for example, that the Israeli-Palestinian struggle is basically about economic values, or that the Quiet Revolution is mainly about employment opportunities for educated Quebecois ... utterly trivializes and distorts the meaning and stakes of these conflicts.” ESMAN, supra note 31, at 234. Nevertheless, “[t]here is likely to be an economic dimension to most ethnic conflicts.” Id. at 231.

162. HOROWITZ, supra note 10, at 7-9.

163. Id. This is not to suggest that some societies are “inherently or inevitably divided.” Ian Shapiro & Courtney Jung, South African Democracy Revisited: A Reply to Koebbe and Reynolds, 24 POL. & SOC’Y 237, 243 (1996). On the contrary, ethnic divisions may shift or change over
definition includes almost all of the postcolonial societies of Africa, Asia, and the Caribbean as well as many countries in Eastern Europe and the former Soviet Union. 164 Most Latin American countries also satisfy this condition, even though political conflict in the region tends to be "conceptualized mainly in terms of class rather than ethnicity or race." 165

The prevalence of condition three—the presence of a market-dominant ethnic minority—has already been discussed. 166 It is worth reiterating, however, that not every economically dominant ethnic minority is market-dominant for the purposes of this model. Moreover, market dominance need not be caused by superior entrepreneurialism "built in" to a particular group’s genes or culture. Market dominance could, for example, also be the result of decades of political subjugation by an ethnic minority. As we shall see, condition three is a pivotal and often complex variable.

Finally, the vast majority of societies satisfying condition three also meet condition four—that is, the presence of an impoverished majority with claims that they are the "true owners of the nation." 167 In most of these cases, the disenchanted majority asserts group priority by highlighting its indigenousness. 168 These claims of majority "indigenousness" are frequently highly artificial and often the product of elite manipulation. In Sri Lanka, for example, the majority Sinhalese regard themselves as "true" Sri Lankans, and the Ceylon Tamils as foreign intruders, even though the latter “arrived, on average, perhaps a thousand years ago, [and] can hardly be regarded as immigrants.” 169 Most of the economically dominant Indians expelled from Burma (now Myanmar) in the 1960s had roots in the country dating back generations. 170 Similarly, the vast majority of Chinese in Southeast Asia today are citizens of the countries in which they live and are

164. See HIRSCHMAN, supra note 34, at 14; SMITH, supra note 10, at 8-12; Horowitz, supra note 51, at 18-20.
165. James D. Fearon & David D. Laitin, A Cross-Sectional Study of Large-Scale Ethnic Violence in the Post-War Period 16 (Sept. 30, 1997) (unpublished manuscript, on file with The Yale Law Journal); see also Julian Pitt-Rivers, Race, Color, and Class in Central America and the Andes, in 2 READINGS IN LATIN AMERICAN HISTORY 312, 317-18, 321 (John J. Johnson et al. eds., 1985) (describing “the role of ethnic distinctiveness plays in ordering the society of Latin America” and noting that “there is no color bar but rather a color scale”). Julian Pitt-Rivers has suggested that the correlation between class and color in Latin America is increasing rather than decreasing. As growing numbers of unassimilated Indians move to the city, “[t]he result is a continual influx of persons of mainly Indian physique into the proletariat. At the same time, the immigration of Europeans into these countries has been very considerable in the last two decades, and these Europeans have almost all been absorbed into the upper classes.” Id. at 326.
166. See supra Section III.C.
167. HOROWITZ, supra note 10, at 202, 206, 208; see Horowitz, supra note 51, at 23-25.
168. See Horowitz, supra note 51, at 23-25.
169. HOROWITZ, supra note 10, at 203.
170. See GOLAY ET AL., supra note 95, at 209; SMITH, supra note 108, at 200-01.
unlikely ever to return to China. Nevertheless, such groups are generally treated as outsiders by “indigenous” majorities.

C. Model Hypotheses

The basic thrust of the model is that, in countries satisfying the specified conditions, marketization and democratization will tend to benefit different ethnic groups, producing a highly volatile and potentially destructive dynamic along the lines indicated by the three model hypotheses. This Section will substantiate each of these three hypotheses with historical and sociological evidence from the developing world.

1. Hypothesis I: Ethnoeconomic Resentment Against Market-dominant Minorities

It is possible that in prosperous societies where everyone is thriving, the fact that market policies favor a certain ethnic minority may not produce serious destabilizing consequences. In developing countries, however, the situation is starkly different. Although the details differ from country to country, the overall story is remarkably similar. Marketization either causes, maintains, or exacerbates the economic dominance of a particular ethnic minority, and this economic dominance in turn causes, maintains, or exacerbates intense ethnic resentment. The following provides a stylized account:

X’s leaders have initiated market-oriented economic reforms. Expectations are high, as these leaders have waxed eloquent about the liberating and wealth-producing promise of the free market. Early results, however, do not deliver on this promise. Among the Ms, unemployment persists and possibly even increases. Similarly, prices for some basic commodities may actually rise. Most Ms continue to live in abject conditions. At the same time, the MDMs prosper disproportionately. The Ms may or may not be better off

171. See Sowell, supra note 97, at 180.
172. See, e.g., Geertz, supra note 95, at 11-12, 77-78; Vasil, supra note 101, at 225-26; Walter F. Vella, Chaiyo! King Vajiravudh and the Development of Thai Nationalism 194-95 (1978); Horowitz, supra note 31, at 23-25.
173. In a cross-sectional study of ethnic violence, Fearon and Laitin found that “robust growth in per capita income is strongly associated with a lower probability of large-scale ethnic violence.” Fearon & Laitin, supra note 165, at 18.
174. Such reforms typically include privatization, liberalization of trade and capital restrictions, and elimination of price controls and state subsidies.
175. In a well known book, Gurr argued that when actual income is less than expected income, people become frustrated, angry, and more disposed to violent conflict. See Ted Robert Gurr, Why Men Rebel 9, 12-14, 360-67 (1970); see also Fearon & Laitin, supra note 165, at 18 (predicting increased conflict whenever income growth is less than anticipated).
from an absolute perspective, but any sense of improvement is overwhelmed by their continuing poverty and the visible economic dominance of the MDMs.\textsuperscript{176} Frustrated by their relative lack of success, the Ms regard the MDMs as greedy, exploitative, and unscrupulous. As time passes, and the entrenchment of their poverty becomes more palpable, the Ms' animosity toward the MDMs may intensify. Ethnic scapegoating, violence, and even rioting are genuine dangers.

For purposes of the model, it makes no difference whether this ethnoeconomic resentment arises "from the bottom up" or results from deliberate manipulation by political elites.\textsuperscript{177} Similarly, it makes no difference whether a minority's disproportionate economic success under market policies intensifies ethnic resentment, merely provides a convenient focus for preexisting animus, or creates severe resentment where none existed before. Regardless of which of these accounts applies in any given case, the phenomenon of deep resentment against economically dominant ethnic minorities has played out in every region of the developing world. For example, throughout Southeast Asia, Chinese entrepreneurial success has provoked the hatred and envy of indigenous majorities since the colonial period.\textsuperscript{178} Time and again, the Chinese—seen as venal,
exploitative, and perverse—have been portrayed as “draining away the [nation’s] wealth” and posing a “menace to all the principles of economic vitality of the country.” Anti-Chinese violence is an integral part of the region’s history that continues to this day. In Indonesia, for example, where roughly six million working age people (almost all Indonesians) are unemployed, the Chinese are regular targets of arson, vandalism, and ethnic rioting. Scapegoating of, and retaliation against, Southeast Asia’s “greedy” and “hoarding” Chinese “locusts” have visibly intensified as a result of the region’s recent financial crisis.

Are there any Southeast Asian countries where economically dominant Chinese have not provoked violent resentment? Singapore is an obvious exception, which also happens to prove the rule, because the Chinese there have been an economically dominant majority since independence. The only other possible negative case is contemporary Thailand, where relations between the economically dominant Chinese minority and the Thai majority appear to be amiable. Nevertheless, for reasons discussed below, the Thai “exception” may also confirm the rule.

Resentment and vindictive terror have been directed at other economically dominant minorities in Southeast Asia and throughout the developing world. Assamese have repeatedly attacked Bengalis. Burmans killed thousands of Indians during World War II. More recently, a Tamil

180. SOWELL, supra note 97, at 182.
181. AMYOT, supra note 146, at 32 (quoting from an anti-Chinese report sent from the Philippines to the government of Spain in 1896). Early on, many Chinese immigrants remitted profits back to their families in China. See SOWELL, supra note 97, at 182. As Professor Sowell has observed, however, these remittances were tiny in comparison to the wealth generated by the “overseas Chinese” for their host countries’ economies. See id.
182. See, e.g., AMYOT, supra note 146, at 26; SOWELL, supra note 97, at 195, 203, 205.
183. See Paul Jacob, 6.3 Million Indonesians out of Job Last Year, STRAITS TIMES (SINGAPORE), Nov. 8, 1996, at 18.
185. See infra Subsection IV.D.I.a.
188. See H0ROWITZ, supra note 10, at 121, 212-13.
woman in Sri Lanka was randomly dragged off a bus, “doused with gasoline, and set ablaze by a Sinhalese mob in which people danced and clapped their hands while she died in agony.”*190 In Kenya, after a military coup in 1982, the starkly economically dominant Indian minority was confronted with “the unleashed hatred of some of Kenya’s 16 million African majority.”*191 Looters and rioters targeted Asian shops and businesses, smashed “what could not be looted,” and raped at least twenty Indian women.*192 In Tanzania, the retreat from a socialist economy in the 1980s precipitated the “reemergence of the country’s sizeable Asian minority as a powerful force in the economy.”*193 Majority fears that “the non-indigenous community [would] overwhelm and take over everything” led to bitter anti-Indian brutality.*194 Zambia’s “very greedy” Indians, who once were accused of purchasing the body parts of mutilated African children, recently were targeted in mass riots. In one participant’s words: “Indians are the ones getting the chances. They’ve got millions and millions.”*195

In Africa, nonindigenous minorities are not the only targets of resentment. There also have been ethnoeconomic reactions against economically dominant African minorities, at both the national and regional levels. In Kenya, post-independence urban growth (and ethnically-biased state policies) reinforced the economic prominence of the “capitalistic” Kikuyu,*196 who in turn were terrorized and victimized by the Kalenjin, the “rightful” owners of the country.*197 In Nigeria in 1966, tens of thousands of Ibo were slaughtered indiscriminately by resentful mobs.*198 In both Rwanda and Burundi, the ethnocidal conflict between the Hutu majority and the Tutsi minority is inextricably connected with the historical socioeconomic

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190. Sowell, supra note 97, at 28.
194. Id; see also Stephen Buckley, Policy Helps Tanzania Avoid Tribal Tensions Rife Elsewhere in Africa, WASH. POST, Nov. 7, 1995, at A15 (discussing Tanzania’s Indian community).
196. See Himbara, supra note 113, at 476-77; Frank Holmquist & Michael Ford, Kenya: State and Civil Society the First Year After the Election, 41 AFR. TODAY, Fall 1994, at 7, 13; see also Kennedy, supra note 148, at 93-96 (discussing competing explanations for “the rise of the mainly Kikuyu capitalist bourgeoisie” in Kenya). “Independence in 1963 brought Kenyatta to power as well as an ethnic bias toward the Kikuyu . . . . Kenyatta was followed by Moi in 1978 with his bias toward the Kalenjin . . . .” Holmquist & Ford, supra, at 11.
197. Holmquist & Ford, supra note 196, at 12; see id. at 5, 7-9, 13.
198. See Sowell, supra note 97, at 28.
dominance of the latter. In Uganda in the 1960s and 1970s, the politically dominant groups of the north repeatedly subjected the economically dominant Baganda of the south to bloody purges. Dozens of other examples exist.

Depending on the context, the degree of the majority’s resentment will vary. In Indonesia, for example, the Arab minority has provoked much less resentment than the Chinese. Resentment against the Lebanese—known as the “Jews of West Africa” and the “descendants of Judas” in the Caribbean—also has been relatively mild. Nevertheless, in conditions of pervasive poverty, economically dominant ethnic minorities almost invariably have been the targets of ethnically charged resentment on the part of the relatively impoverished majorities around them.

To be sure, if market policies in a particular developing country succeeded in bringing rapid prosperity to the great majority of Ms, the ethnoeconomic resentment predicted by the model might well be avoided. In model terms, a developing country that experiences such a “market miracle” effectively would have broken out of model conditions one (economic underdevelopment) and four (presence of an impoverished majority). Unfortunately, such a scenario has never yet unfolded in any developing country with a market-dominant minority.205

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199. See LEMARCHAND, supra note 114, at 15-16; PRUNIER, supra note 114, at 39. In both Rwanda and Burundi, the Tutsi were also politically dominant for many years. See Gourevitch, supra note 150, at 59 (describing periods of Tutsi political domination in Rwanda and Burundi before and after the colonial period).

200. See HOROWITZ, supra note 10, at 487, 490; MAMDANI, supra note 114, at 291.

201. See HOROWITZ, supra note 10, at 117-18; Justus M. van der Kroef, The Arabs of Indonesia, 7 MIDDLE E. J. 300, 310, 311, 318 (1953).

202. SOWELL, supra note 97, at 235.

203. Nicholls, supra note 115, at 339, 349.

204. Even then, ethnic accord is by no means guaranteed. Cf. Walker Connor, Etnonationalism, in UNDERSTANDING POLITICAL DEVELOPMENT 196, 197 (Myron Weiner & Samuel P. Huntington eds., 1987) (criticizing the unwarranted presumption “that the wellsprings of ethnic discord are economic and that an ethnic minority can be placated if its living standard is improving”).

205. As discussed above, there are no market-dominant minorities in the East Asian Tigers. See supra text accompanying note 134. More generally, market reforms rarely produce immediate and widespread benefits for large portions of the population. As Huntington has observed:

Economic liberalization . . . may produce some immediate benefits for a few groups which are able to take advantage of new opportunities to make money. It is also very likely, however, to impose widespread and often severe economic penalties on much larger groups. Subsidies are ended, taxes are raised, budgets are balanced, workers are discharged, businesses go bankrupt, prices rise, wages fall and production declines. Enormous economic costs must be paid in order to achieve a promised long-term economic nirvana that seems to recede indefinitely into the future.

Huntington, supra note 2, at 25; see Przeworski, supra note 132, at 39 (suggesting that market reforms almost invariably “make most people worse off for some time to come”).
2. Hypothesis II: Ethnonationalism and Democratization

Hypothesis II predicts that with democratization, the Ms’ ethnoeconomic resentment against the MDMs will tend to be mobilized and transformed into a potent ethnonationalist political movement along the following lines:

Elections in X are about to take place. Deeply frustrated with their continuing poverty and resentful of the MDMs’ economic dominance, the Ms are primed for an opportunity to set the ethnic balance straight. Politician P, a shrewd and charismatic M, seizes this opportunity. Deliberately fomenting the Ms’ frustration and fear, P scapegoats the MDMs, blaming them for X’s economic and social problems—a strategy that allows P to appear populist despite his elite background. If possible, P depicts the MDMs as a political threat: as a dangerous (and preferably historical) enemy who want to “swallow up” the Ms. At first, more moderate candidates disavow P’s ethnic politics. P, however, makes his rivals look like traitors. Soon, it becomes necessary for every candidate at least to champion the indigenous majority, if not to join in P’s more venomous rhetoric. In the process, the Ms’ ethnoeconomic resentment is politicized and transformed into an ethnonationalist movement that insists that X’s land, wealth, and identity must be reclaimed by the Ms, the true owners of the nation.

The general link between democracy and ethnic conflict is well documented. Many scholars have shown that in severely divided societies

206. Cf. Mansfield & Snyder, supra note 177, at 86 (observing that in 1920s Japan, the adoption of a nationalist strategy “scapegoating Japan’s alleged internal and external enemies . . . proved to be a way for militarist elite groups to appear populist in a democratizing society”).
207. See, e.g., Horowitz, supra note 51, at 19 (discussing how “[a]n ethnically differentiated opposition can easily be depicted as consisting of . . . historical enemies”).
208. Throughout Africa, Asia, and the former Communist bloc, ethnic conflict has been a major reason for the failure of democratization. See, e.g., id. at 18-23; Michael Lind, A New Look at Nationalism: A Defense of Liberal Nationalism, CURRENT, Oct. 1994, at 30, 33. At the same time, “rapid democratization in autocratic societies often has correlated with heightened levels of ethnic conflict.” Orentlicher, supra note 177, at 62. Thus, Ted Gurr has observed that “[t]he Soviet and Eastern European regimes relaxed coercive constraints on nationalism and intergroup hostilities at a time when the institutionalized means for their expression and accommodation did not yet exist, or were fragile and distrusted. . . . The result has been a resurgence of communal activism, both protest and rebellion.” TED ROBERT GURR, MINORITIES AT RISK: A GLOBAL VIEW OF ETHNOPOLITICAL CONFLICTS 137 (1993); see also Mansfield & Snyder, supra note 177, at 88 (“Democratization typically creates . . . high-energy mass politics” and appeals to nationalism by “newly ambitious elites and the embattled old ruling groups”); Fareed Zakaria, The Rise of Illiberal Democracy, FOREIGN AFF., Nov./Dec. 1997, at 22, 35 (“[W]ithout a background in constitutional liberalism, the introduction of democracy in divided societies has actually fomented nationalism, ethnic conflict, and even war.”).
“where holding an election is like taking a census,”

the very process of political liberalization in democratizing autocracies presents new opportunities for increased ethnic mobilization” and a politics dominated by ethnic issues. More specifically, in democratizing countries with a resented, economically dominant minority, politicians seeking votes will have powerful incentives to scapegoat that minority and foment ethnic hatred. Indeed, as an empirical matter, democratization in the presence of an economically dominant minority has repeatedly given rise to potent ethnonationalist movements that seek to use political power to “correct” the ethnoeconomic imbalance.

In Malaysia, for example, laissez-faire market policies between 1957 and 1970 reinforced the economic dominance of the Chinese minority and provoked growing resentment among the Malays, particularly among the elites. In the ethically charged atmosphere following the anti-Chinese riots of 1969, numbers of vying political organizations sought to capitalize on the Malays’ economic frustration and their fear of being “swallow[ed]” by the Chinese. Thus, Malay politicians, supported by other Malay elites, advanced the view that ethnoeconomic imbalances were at the heart of all Malaysia’s problems, that herculean efforts to redistribute wealth to the Malays were imperative, and that their election to power was necessary if a “Malaysia for Malays” was to be realized. The result was a

209. Mansfield & Snyder, supra note 177, at 87.
210. Orentlicher, supra note 177, at 62; see Horowitz, supra note 51, at 19; Mansfield & Snyder, supra note 177, at 87.
211. See, e.g., ESMAI, supra note 31, at 230-31 (citing examples of “officially inspired” scapegoating of middleman minorities in Eastern Europe, Southeast Asia, and Africa); Horowitz, supra note 177, at 255-56 (arguing that Malay politicians and elites deliberately highlighted ethnic disparities in wealth to achieve their own policy goals). There are different views as to why and how ethnic mobilization occurs. Primordialists emphasize the deep historical, social, and possibly even genetic foundations of ethnic identity and the “primal” need of individuals to defend that collective identity when it is threatened. See GURR & HARFF, supra note 139, at 78-79; Frye, supra note 33, at 607-08; supra note 31 and accompanying text. By contrast, instrumentalists view ethnic or national identity as “an artifact—the deliberate creation of political activists bent on mobilizing popular support.” Binder, supra note 177, at 242; see BRASS, supra note 31, at 19-23; GURR & HARFF, supra note 139, at 78-79. The model presented in this Article embraces various forms of ethnic mobilization, whether primordial, artifactual, or something in between.
212. See, e.g., DAVID BROWN, THE STATE AND ETHNIC POLITICS IN SOUTHEAST ASIA 26, 230-31 (1994); Horowitz, supra note 177, at 255-56. At the same time, the Chinese, who in certain states comprise over 40% of the population, were increasingly seen as a political threat. See Horowitz, supra note 177, at 255.
213. These riots, in which nearly 1000 people died, followed on the heels of federal and state elections in which the Chinese opposition parties in the state of Selangor came close to taking power. See GORDON P. MEANS, MALAYSIAN POLITICS: THE SECOND GENERATION 6-8 (1991); Horowitz, supra note 177, at 255.
214. HOROWITZ, supra note 10, at 190; see MEANS, supra note 213, at 3-4; Horowitz, supra note 177, at 255-56.
215. See M. NAZRUL ISLAM, PROBLEMS OF NATION-BUILDING IN DEVELOPING COUNTRIES: THE CASE OF MALAYSIA 71 (1988); MEANS, supra note 213, at 3-4; Horowitz, supra note 177, at 255-56.
powerful ethnonationalist consensus among Malays that they, the bumiputra ("sons of the soil"), were the only rightful owners of the nation.\textsuperscript{216} A year after the Kuala Lumpur riots, the government adopted the New Economic Program ("NEP") memorializing the special position of the Malays.\textsuperscript{217}

In Sri Lanka, which has maintained a troubled parliamentary democracy for half a century,\textsuperscript{218} the disproportionate economic and political power of the Tamil minority had produced bitter resentment among the Sinhalese by the 1950s.\textsuperscript{219} There was thus "a huge untapped 'vote bank'" of frustrated Sinhalese that was waiting to be mobilized. Dennis Austin explains:

The times produced the man. Solomon Bandaranaike, for all his Oxford background, Catholic upbringing and legal training, was quick to see the prize that was there. He left the UNP, converted from Roman Catholicism to Buddhism, took up the cause of 'Sinhala Only' and began to campaign under the new socialist banner of a Sri Lanka Freedom Party.\textsuperscript{220}

The "Sinhala Only" campaign united an unlikely array of Sinhalese forces, and in 1956, Bandaranaike's party swept to power on promises to declare Sinhala the sole national language and Buddhism the national religion.\textsuperscript{221} Within three months of Bandaranaike's election, the new Parliament enacted a bill proclaiming Sinhala the single national language.\textsuperscript{222} "Sinhalisation"—accompanied by intensifying Tamil opposition and violence—accelerated under the leadership of Bandaranaike's widow, Sirimavo.\textsuperscript{223} "Elections easily became the opium of the newly enfranchised,"\textsuperscript{224} and today the Sinhalese, through constitutional

\textsuperscript{216} See BROWN, supra note 212, at 242. During the 1969 election campaign, Dr. Mahathir, who became Prime Minister in 1981, advised his Chinese constituents not to vote for him "'as he would not represent their interests in Parliament.'" \textit{Id.} (quoting K. VON VORYS, DEMOCRACY WITHOUT CONSENSUS: COMMUNALISM AND POLITICAL STABILITY IN MALAYSIA 284 (1975)).

\textsuperscript{217} See CHRISTOPHER ADAM ET AL., ADJUSTING PRIVATIZATION: CASE STUDIES FROM DEVELOPING COUNTRIES 224-25 (1992); Horowitz, supra note 177, at 266-68.

\textsuperscript{218} See DENNIS AUSTIN, DEMOCRACY AND VIOLENCE IN INDIA AND SRI LANKA at xvii (1994).

\textsuperscript{219} See id. at 66.

\textsuperscript{220} Id.

\textsuperscript{221} Id. at 66-67 (footnote omitted).

\textsuperscript{222} See id. at 67.

\textsuperscript{223} Solomon Bandaranaike was assassinated in 1959. See id. In the 1970s, after an extended period of political turmoil and violence, Mrs. Bandaranaike forced through a new constitution dedicated to "protect[ing] and foster[ing] Buddhism," \textit{id.} at 69, purged the state apparatus and armed forces of Christian and Tamil members, \textit{see id.} at 69-70, and oversaw the adoption of sweeping anti-Tamil educational and economic policies, \textit{see id.} at 70 & n.18; HOROWITZ, supra note 10, at 663-66.

\textsuperscript{224} AUSTIN, supra note 218, at 67.
and other policies, continue to shut out the Tamils. Nevertheless, Tamil guerrillas have retaliated ferociously.

India, by contrast, does not appear to have an economically dominant ethnic minority at the national level. Nevertheless, democracy has meant ethnic politics in a growing list of Indian states. Furthermore, in regions of India where an economically dominant minority is present, Hypothesis II has been borne out directly. Thus, in Bombay in the late 1960s, the “nativist” Shiv Sena party rose to political prominence in just two years by attacking the economically dominant South Indian minority and championing “Maharashtra for Maharashtrians.” Around the same time in Telangana, the nativist Praja Samiti party gained political ascendancy by targeting and scapegoating the economically dominant coastal Andhra minority. More recently in Assam, a student-based Assamese party swept to power in 1985 by calling for the expulsion and disenfranchisement of economically dominant Bengali immigrants. In classic ethnonationalist rhetoric, Assam’s new Chief Minister declared, “The jobs, the businesses and other economic activities and precious land which rightly belonged to the indigenous people have been grabbed by the outsiders.”

225. See id. at 67-75.
226. See id. at 68-71.
228. See, e.g., Brass, supra note 31, at 177-79 (analyzing Hindu-Sikh political polarization in Punjab); John F. Burns, A Violent Goal: Hindustan for Hindus, N.Y. Times, Nov. 3, 1995, at A6 (discussing Hindu nationalist political success in Maharashtra); Steven R. Weisman, Gandhi’s Party Loses in Assam, N.Y. Times, Dec. 19, 1985, at A4 (stating that in a growing list of Indian states, including Andhra Pradesh, Assam, and Punjab, elections have been polarized along religious or sectarian lines).
229. Katzenstein, supra note 110, at 18; see id. at 30, 33-34; Myron Weiner, Political Change: Asia, Africa, and the Middle East, in Understanding Political Development, supra note 204, at 33, 36. The Shiv Sena fared well in Bombay electoral politics but not elsewhere in the Maharashtra state, where there was no conflict with South Indians. See Horowitz, supra note 10, at 38. After 1968, the Shiv Sena sought to enlarge its political base by shifting its criticism to “antinationalist[s]” groups like Muslims and Communists, though this effort was not successful. Katzenstein, supra note 110, at 34-35.
230. See Katzenstein, supra note 110, at 30; Weiner, supra note 229, at 217-19, 238-40, 244-45.
231. See Weisman, supra note 228, at A4. For a description of the student-based Assam party, see generally Ashutosh Varshney, After the Assam Killings, CHRISTIAN SCI. MONITOR, Mar. 22, 1983, at 27. Although the Assamese student movement started on a general anti-Bengali note, calls for deportation technically were directed only at the relatively recent (and principally Muslim) Bengali immigrants from Bangladesh and not at the Hindu Bengalis who, for the most part, settled in Assam much earlier. See id.
232. Sanjoy Hazarika, India’s Assam State Demanding Ban on Migration, N.Y. Times, Sept. 13, 1987, at A12. India, Malaysia, and Sri Lanka are aberrational in their relatively stable (although by no means unproblematic) histories of democratization. In most of the developing world, where democracy has been tried, it has either failed altogether or proceeded much more fitfully, supplanted regularly by military coups and extended periods of authoritarianism. In these cases, too, democratization has generally borne out the model’s second hypothesis. Thus, in one
Hypothesis II is also corroborated by the recent (not always successful) transitions to democracy in the non-Russian republics of the former Soviet Union. Elections in these countries—where Russians for seventy years were economically and politically dominant—almost without exception have taken on potent ethnonationalist dimensions, as captured by slogans like “Estonia for Estonians,” 233 “Georgia for the Georgians,” 234 “Kazakhstan-for-the-Kazakhs,” 235 “Latvia for Latvians,” 236 “Lithuania for Lithuanians,” 237 “Moldavia for Moldavians,” 238 “Ukraine for Ukrainians,” 239 and “Uzbekistan for Uzbeks.” 240 Typically, such slogans are followed by the enactment of legislation discriminating against ethnic Russians. 241

Indeed, in virtually all of the cases discussed, ethnonationalist sloganeering during the electoral process has led to the election of leaders from a majority ethnic group and ultimately to the emergence of what
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scholars have called an “ethnocratic state,” which acts as the agent of the majority ethnic group with respect to ideology, social policy, and resource distribution. In an ethnocratic state, recruitment to elite positions in the civil service, armed forces, and government is disproportionately and overwhelmingly from the ethnic majority. Moreover, the state’s stance on language, religion, and moral values—that is, the national ideology—derives primarily from the culture of the ethnic majority. Finally, the constitutions, laws, and political structures of an ethnocratic state generally serve to reinforce the monopolization of power by the ethnic majority. In these ways, “[i]n country after country, a single ethnic group has taken control over the state.”

Once again, however, there may be an escape route—this time turning not on the extraordinary success of markets but on the extraordinary success of democracy. If in ethnically divided countries the democratic process itself could work a profound characterological change among voters—diffusing their ethnonationalism and permitting them to see all their fellow citizens as participants in a common enterprise—then Hypothesis II could be avoided. Unfortunately, in the developing world democracy does not appear to have this effect. On the contrary, as this Section has shown, democratization has had precisely the opposite effect, exacerbating ethnic tensions and galvanizing ethnonationalist movements in conditions of economic and political underdevelopment.

3. Hypothesis III: Model Outcomes

Thus far, the model has traced the formation of ethnoeconomic resentment against market-dominant minorities, the transformation of that resentment in the course of democratic electoral competition into an ethnonationalist political movement, and the subsequent installation of an ethnocratic state. Now consider the following scenario:

P comes to power in X on a platform of “X for the Ms.” The state apparatus is now composed disproportionately of Ms and is openly regarded as the agent of the Ms’ interests. Due in part to his own electoral strategy, P confronts an aroused population of Ms who view the continued presence of the economically dominant MDMs

242. See BROWN, supra note 212, at 36-37; Weiner, supra note 229, at 35-37.
243. See BROWN, supra note 212, at 36-37.
244. See id. at 37.
245. See id.
246. See Weiner, supra note 229, at 35.
247. See supra text accompanying notes 204-205 (discussing the possibility of a “market miracle”).
as intolerable. The Ms demand that P take decisive action in order to make good on his campaign rhetoric. What are P's options?

In these circumstances, P cannot both satisfy the democratic will and permit the MDMs to continue operating under market conditions. Accordingly, Hypothesis III predicts that if the Ms' ethnonationalism becomes sufficiently potent, one or more of three outcomes become highly probable: (1) an ethnically fueled, antimarket backlash; (2) measures aimed at eliminating the MDMs; or (3) a retreat from democracy.

a. Antimarket Backlash

Time and again throughout the developing world, governments, both authoritarian and democratic, have responded to the “problem” of an economically dominant minority by adopting policies aimed at correcting the ethnoeconomic “imbalance.” Such policies have rarely, if ever, taken the form of Western-style social welfare measures—that is, post-market redistributions administered by a relatively sophisticated state apparatus. On the contrary, ethnocratic states in these conditions characteristically have pursued ethnically targeted governmental intrusions into market processes, principally by nationalizing industries controlled by the resented minority or by imposing ethnically based restrictions on economic activity.²⁴⁸

Nationalization has been a recurrent phenomenon in the developing world. As I have shown elsewhere, conventional wisdom overemphasizes the extent to which nationalizations in the developing world have been based on socialist or communist ideals.²⁴⁹ Notwithstanding the Marxist rhetoric occasionally adopted by nationalizing leaders, nationalization programs in developing countries have almost never sought to eliminate private property or to eradicate all economic classes.²⁵⁰ On the contrary, in the vast majority of cases, nationalization in developing countries fundamentally has been an expression of economic nationalism, particularly directed at economically dominant ethnic minorities.²⁵¹ To name just a few examples, ethnically targeted nationalizations or confiscations have occurred in postcolonial Burma,²⁵² Indonesia,²⁵³ Kenya,²⁵⁴ Malaysia,²⁵⁵

²⁴⁸. See ESMA, supra note 31, at 231-32.
²⁴⁹. See Chua, supra note 18, at 261-62.
²⁵⁰. See id. at 262. In only a few exceptional cases (for example, Cuba and Vietnam) has there been a full-fledged effort to eliminate private ownership of resources altogether. See id. at 302 n.582.
²⁵¹. Nationalistic nationalizations have been directed not just at these ethnic “internal foreigners” but also at Western “imperialist” foreigners. Id. at 263-66.
²⁵². See, e.g., GOLAY ET AL., supra note 95, at 211; Chua, supra note 18, at 253-54, 270.
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Pakistan, Sri Lanka, Thailand, and Uganda and most recently have been championed by indigenous politicians in South Africa and Zimbabwe.

At the same time, ethnocratic governments also have attacked the economic power of economically dominant minorities by "superseding market processes of competition and manipulating the rules governing access for the benefit of their ethnic constituents." Nowhere have ethnically discriminatory economic restrictions been more prevalent than in Southeast Asia. Indeed, after World War II,

there was scarcely a country where the Chinese could pursue their callings or their commercial preferences without disapproval or interference. In Thailand Chinese aliens were excluded from twenty-seven occupations, in Cambodia from eighteen . . . . To suffer harsh economic discrimination of one kind or another was part of being Southeast Asian Chinese.

A stark but typical example is the "Filipinization" law passed in the Philippines in 1954 that explicitly banned the Chinese from "engaging directly or indirectly in the retail business." The law was defended as "not the product of racial hostility, prejudice or discrimination, but the

253. See, e.g., GOLAY ET AL., supra note 95, at 137, 166, 193-95; Chua, supra note 18, at 269.
254. See, e.g., Himbara, supra note 113, at 470-72.
255. See, e.g., Chua, supra note 18, at 247.
256. See, e.g., id. at 250-51.
257. See, e.g., id. at 255.
258. See, e.g., id. at 269-70.
259. See, e.g., GOLAY ET AL., supra note 95, at 299-306; Chua, supra note 18, at 251-52, 270.
260. See, e.g., SAMUEL DECALO, COUPS AND ARMY RULE IN AFRICA 174-75 (2d ed. 1990); MAMDANI, supra note 114, at 260-69. I have also shown that the waves of nationalizations earlier this century in Latin American countries like Bolivia, Mexico, and Peru had ethnic as well as class dimensions. See Chua, supra note 18, at 272-79.
263. ESMAN, supra note 31, at 230; cf. SOWELL, supra note 97, at 266 (discussing antimarket economic policies enacted in Eastern Europe to counter the overrepresentation of Jews in commerce, industry, and the professions).
264. PANT, supra note 178, at 217.
265. GOLAY ET AL., supra note 95, at 66-67; see also id. at 430 (describing similar legislation passed by Cambodia in 1957). An earlier manifestation of anti-Chinese legislation in the Philippines actually reached the United States Supreme Court. In 1926, when the Philippine Islands were under United States rule, the Supreme Court declared unconstitutional the Chinese Bookkeeping Act of the Philippines prohibiting the keeping of account books in any language other than English, Spanish, or a local Filipino dialect. See Yu Cong Eng v. Trinidad, 271 U.S. 500 (1926). Finding that the Act "was chiefly directed against . . . Chinese merchants," most of whom spoke only Chinese, id. at 511, 513, the Court held that the Act denied the Chinese equal protection of the laws in violation of the Philippine Bill of Rights. See id. at 524-25.
expression of the legitimate desire or determination, of the people, through their authorized representatives, to free the nation from the economic situation that has unfortunately been saddled upon it . . ." 266

In a similar vein, in the late 1960s, Uganda’s Prime Minister Obote passed laws establishing “a developmental socialism” largely to “cut the [economically dominant Baganda] down to size.” 267 Around the same time, Kenya passed a number of licensing and trade laws effectively barring Indians—including citizens of Kenya—from trading in rural areas and “all noncentral parts of major cities and towns." 268 Although none of these three countries enforces these laws any longer, ethnically based restrictions are today robust in countries such as Fiji, 269 Malaysia, 270 Sri Lanka, 271 and, as discussed further below, South Africa, 272 as well as in the Indian states of Andhra Pradesh, Assam, and Maharashtra. 273 Such restrictions—“the antithesis of laissez-faire” 274 but not necessarily normatively unjustified—include ethnically based quotas on corporate asset ownership and other ethnically based restrictions on commerce, employment, finance, land ownership, licensing, and government contracts. 275 This basic aspect of developing country commercial law is almost never discussed in the marketization literature.


270. See ADAM ET AL., supra note 217, at 214-15; HOROWITZ, supra note 10, at 654; HOROWITZ, supra note 177, at 264-71.

271. See AUSTIN, supra note 218, at 70, 82; Chandra Richard de Silva, Sinhala-Tamil Ethnic Rivalry: The Background, in FROM INDEPENDENCE TO STATEHOOD 111, 118, 211 (Robert B. Goldmann & A. Jayaratnam Wilson eds., 1984); Chandra Richard de Silva, Sinhala-Tamil Relations and Education in Sri Lanka: The University Admissions Issue—The First Phase, 1971-77, in FROM INDEPENDENCE TO STATEHOOD, supra, at 125, 130-31.

272. See infra Section V.A.


274. GOLAY ET AL., supra note 95, at 35.

275. See, e.g., ADAM ET AL., supra note 217, at 214-15 (describing NEP in Malaysia); HOROWITZ, supra note 10, at 654-56 (describing general range of preferential programs in ethnically divided societies); HOWARD, supra note 269, at 333-34 (describing restrictions on land ownership in Fiji); KATZENSTEIN, supra note 110, at 143-45 (describing employment quotas and other “nativist” policies in Maharashtra); Suryadinata, supra note 97, at 770-71 (describing anti-Chinese policies in Indonesia).
b. *Eliminationist or Final “Solutions”*

As a historical matter, ethnically discriminatory nationalizations and commercial restrictions have almost invariably backfired. On the one hand, they have had drastically negative economic effects. In particular, nationalization (often euphemistically labeled “state capitalism” or “bureaucratic entrepreneurship”) in the developing world repeatedly has resulted in grossly inefficient, corrupt government enterprises. On the other hand, ethnically targeted restrictions have proven notoriously ineffective; economically dominant minorities have managed to frustrate such restrictions consistently through evasion (e.g., bribery or use of indigenous frontmen) or sheer indispensability. As a result, ethnically based backlashes against the market do not satisfy—and may even exacerbate—the ethnonationalist demands that generated them.

To respond to increasingly virulent majority pressures, P may move to more draconian measures targeting the MDMs, ranging from oppressive exclusionary policies to forced repatriation or expulsion, and finally (in some cases) to pogroms, extermination, and genocide. Throughout the developing world, majority-based governments have responded to the economic dominance of hated minorities by trying in effect to eliminate them. The least egregious of such eliminationist strategies include burdensome language requirements, discriminatory immigration and citizenship policies, discriminatory policies for admission to education, and policies designed to eradicate the resented minority culture.

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277. GOLAY ET AL., supra note 95, at 58; Himbara, supra note 113, at 474.

278. See, e.g., GOLAY ET AL., supra note 95, at 56-57 (describing the corruption, inefficiency, and heavy losses incurred by government corporations in the Philippines); Himbara, supra note 113, at 474 (noting that Kenya’s “state capitalism” program in the late 1970s and early 1980s led to widespread corruption and gross inefficiency); Shirley, supra note 88, at S32 (noting that public enterprises in the developing world are typically unproductive and inefficient and often require government bail-outs financed through taxes or inflation).

279. See Bonacich, supra note 95, at 592. For example, in Southeast Asia, “[a]ttempts to control the Chinese [through] [l]icensing systems have been thwarted by the willingness of indigenous businessmen, whom they were intended to benefit, to sell their import and export permits to the Chinese who possessed what they lacked—organization, contacts, experience and capital.” Id. (citation omitted).

280. To return to the terms of the model: X’s economy is now stagnating under the massive inefficiencies of state-run, “indigenized” enterprises, and most Ms are probably worse off than before P was elected. See, e.g., ADAM ET AL., supra note 217, at 226 (noting that Malaysia’s indigenization drive in the 1970s “failed to maintain the value of assets appropriated for the Bumiputra”); Himbara, supra note 113, at 474-75 (detailing the dismal and thoroughlygoing failure of Kenya’s “Africanization” program).

281. See BROWN, supra note 212, at 27; ESMAN, supra note 31, at 231-32; Bonacich, supra note 95, at 592.

282. See, e.g., AUSTIN, supra note 218, at 67; (describing Sri Lanka’s “Sinhala Only” bill declaring Sinhala to be the sole national language); HOROWITZ, supra note 10, at 660-66 (describing ethnic preferences in education in Malaysia, Sri Lanka, and Tanzania); Suryadinata,
Such discriminatory policies have led to the elimination of the resented minority in one of two ways. First, policies of ethnic exclusion have frequently led to massive emigrations. In the 1950s and 1960s, for example, state-condoned prejudice and policies targeting the Chinese in Indonesia and the Indians in Burma led to the flight of thousands of people.\textsuperscript{233} In Rwanda, anti-Tutsi policies initiated by Hutu leaders "started a mass exodus of refugees abroad, which eventually took some 130,000 Rwandese Tutsi to the Belgian Congo, Burundi, Tanganyika and Uganda by late 1963."\textsuperscript{284} In Kenya, thousands of Indians have left in the last few years, fearing a "wholesale expulsion of Asians."\textsuperscript{285} In Fiji, calls for the mass deportation of Indians coupled with ethnic violence have caused over 30,000 Indians to leave the island since 1987.\textsuperscript{286} Finally, since the late 1980s, emerging ethnonationalist movements in virtually all of the non-Russian republics of the former Soviet Union have spawned discrimination against the Russian-speaking population ranging "from subtle prejudice and discriminatory language and citizenship laws, to job-firings and even violence."\textsuperscript{287} As a result, more than two million Russians and other Russophone nationals have "abandon[ed] their homes" for "the disarray of post-Soviet Russia."\textsuperscript{288}

Second, exclusionary policies sometimes have had the goal—and, to a lesser extent, the effect—of coerced assimilation. For example, in Southeast Asian countries such as Indonesia and Vietnam, mandatory naturalization laws, bans on Chinese language newspapers, schools, and movies, restrictions on "Chinese religion, beliefs and customs," and name change policies sought to absorb the Chinese into the indigenous community and

supra note 97, at 780 (describing language bans and discriminatory education policies targeting the Chinese minority in Indonesia).


284. PRUNIER, supra note 114, at 51 (citation omitted).


287. Robert P. Devecchi, Prepared Testimony on Forced Migration in the Newly Independent States of the Former Soviet Union Before the House Committee on International Relations and Subcommittee on International Operations and Human Rights (May 22, 1996), in FEDERAL NEWS SERVICE, available in LEXIS, News library, FEDNEW file; see also CHINN & KAISER, supra note 127, at 190, 194, 198-201. Emigration rates (i.e., Russian emigrants as a percentage of the Russian population) from 1989 and 1993 were 10.4% in Lithuania, 10.9% in Uzbekistan, 17.1% in Kyrgyzstan, 28% in Georgia, 31.1% in Azerbaijan, and 35.6% in Armenia. See id. at 95, 231, 245.

288. Id.
thus to eliminate them as a distinct ethnic minority. For many students of ethnic conflict, assimilation represents a glimmer of hope for societies long riven by ethnic hatred. Others view assimilation as "cultural genocide." In any event, assimilation is not always possible or effective.

Developing world leaders also have found more direct ways to eliminate economically successful "outsider" minorities. Following a pattern exemplified by the extraordinary history of Jewish expulsions, Indonesia ejected the Chinese en masse in 1960 and Vietnam did the same in the late 1970s. In Cambodia, the Khmer Rouge expelled thousands of Vietnamese between 1975 and 1978. In Burma during the Second World War, an estimated 500,000 Indians were chased out of the country by young nationalists of the Burma Independence Army.

See, e.g., GOLAY ET AL., supra note 95, at 404-06 (describing attempts to assimilate the Chinese in Vietnam); Suryadinata, supra note 97, at 776-82 (describing assimilationist educational and cultural policies directed at the Chinese minority in Indonesia).

See, e.g., Wendell Bell, Ethnicity, Decisions of Nationhood, and Images of the Future, in ETHNICITY AND NATION-BUILDING: COMPARATIVE INTERNATIONAL AND HISTORICAL PERSPECTIVES 285-86 (Wendell Bell & Walter E. Freeman eds., 1974) (asserting the possibility of assimilation into a single global culture); Horowitz, supra note 51, at 19 (observing that in Taiwan and Thailand rates of ethnic intermarriage correlated positively with improved ethnic relations and with prospects for democracy).


The assimilation of many Eastern European Jews, for example, in Czechoslovakia, Hungary, Latvia, and Romania had little or no effect on their ultimate fate in the Holocaust. See SOWELL, supra note 97, at 267.

See Weiner, supra note 229, at 36.

The Jewish Exodus from Egypt took place some time between 1450 and 1200 B.C. See MICHAEL GRANT, THE JEWS IN THE ROMAN WORLD 8 (1973). Subsequently, Jews were expelled from Rome in 139 B.C. (although Jews do not appear to have been economically dominant in ancient times). See id. at 31. They were, furthermore, expelled from England in 1290, France in 1394, Spain in 1492, Cologne in 1424, Augsburg in 1439, and Moravia in 1454. See SOWELL, supra note 97, at 236, 242, 248. The wealth that the Spanish Jews were forced to leave behind helped finance the voyage of Columbus that led to the discovery of the Western Hemisphere. See id. at 248. In Russia, anti-Jewish pogroms in the 1880s "set off one of the great mass exoduses in history." Id. at 264.

See PAN, supra note 178, at 217; RICKLEFS, supra note 283, at 267.

See SOWELL, supra note 97, at 212. The mass exodus of Chinese from Vietnam in 1977-1978 also reflected in part deteriorating relations between Vietnam and China. See RAMES AMER, THE ETHNIC CHINESE IN VIETNAM AND SINO-VIETNAMESE RELATIONS 50 (1991); YUAN-LI WU & CHUN-HSI WU, ECONOMIC DEVELOPMENT IN SOUTHEAST ASIA 86 (1980). According to the Vietnamese government, only those Chinese illegally residing in Vietnam were being expelled. See AMER, supra, at 48. The Chinese version of the expulsions was very different. See id. at 47. For an evenhanded discussion of the Sino-Vietnamese dispute surrounding the exodus of Chinese from North Vietnam to China, see id. at 46-53, 57-80.

See Tarr, supra note 107, at 33.

See Smith, supra note 283, at 101; Weiner, supra note 229, at 36.
Uganda, Idi Amin deported all Indians and Pakistanis in 1972, then distributed their assets as spoils to his military officers. In most of these cases, the economy suffered drastically as a result of the expulsions.

Finally, economically dominant minorities have been eliminated through pogroms, mass killings, and genocide. In the Philippines, Spanish colonialists massacred all but 2000 of Manila’s 26,000 member Chinese minority in 1603. Chinese also were killed en masse in Vietnam in 1792 and in Indonesia in 1965 and 1966. In Cambodia, “[i]n an orgy of violence” in 1970, “more than 4000 Vietnamese were killed in under a month.” Two hundred thousand Chinese—half of the Chinese population in Cambodia—were subsequently killed between 1975 and 1979. In Burma, thousands of Indians were killed in the 1930s and 1940s. Most recently in Rwanda, between 500,000 and 1,000,000 Tutsi were exterminated from April to June 1994.

As noted earlier, I do not argue that economic factors alone motivated these atrocities. I also do not claim that nonprosperous ethnic minorities are never persecuted. Nonetheless, it remains the case that in country after country, large populations of economically dominant ethnic minorities repeatedly have been subjected to severe reprisals, ranging from cultural oppression to extermination.

c. Retreat from Democracy

The previous two outcomes contemplate an ethnocratic government acting in accordance with majoritarian ethnonationalist sentiment (which the government itself may have incited) through either market interventions or eliminationist measures. In the third model outcome, the government defies the democratic will and seeks to accommodate the resented market-dominant minority. There are several reasons why an ethnocratic leader might adopt this pro-market but antidemocratic strategy. He might, for example, wish to harness the minority’s skills to revive his country’s

299. See DECALO, supra note 260, at 174-76; MAMDANI, supra note 114, at 302-12.
300. See SOWELL, supra note 97, at 322; Weiner, supra note 229, at 36. Out of “economic desperation,” some governments later sought the return of the minorities they had expelled. SOWELL, supra note 97, at 322.
301. See Morella, supra note 103; cf. PURCELL, supra note 266, at 501, 513-14 (explaining that about 23,000 Chinese were killed in 1603); DAVID JOEL STEINBERG, THE PHILIPPINES 40-41 (2d ed. 1990) (discussing hostility towards the Chinese majority).
303. See PAN, supra note 178, at 218.
304. Tarr, supra note 107, at 34.
305. See SOWELL, supra note 97, at 213; Tarr, supra note 107, at 34.
306. See FREDHOLM, supra note 189, at 29-37; SMITH, supra note 108, at 44.
307. See PRUNIER, supra note 114, at 263; Morris, supra note 90, at 350.
flagging economy. Alternatively, he and his cohorts may simply have been “bought out” by the wealthy minority. Or he may have been subject to overwhelming pressure from international organizations and international business interests. In any event, the pursuit of ethnically tolerant policies in the face of an aroused, ethnonationalist majority almost invariably has required a significant retreat from democracy.

In some cases, this retreat is obvious, as when an accommodationist leader disbands the legislature, cancels elections, or otherwise suppresses political competition. The autocratic regime of Indonesia’s General Suharto provides an example of this phenomenon. Suharto seized power militarily in 1965, bringing to an end the “guided democracy” of his predecessor Sukarno,308 whose economic policies—including the nationalization and “indigenization” of major industries—had produced catastrophic results.309 Suharto proceeded to quash rival political parties and to extinguish opposition of all types.310 In return for the support of the World Bank and the IMF, Suharto’s government adopted open door laissez-faire policies to encourage foreign investment and rapid economic growth.311 To that end, after an early “unprecedentedly radical” crackdown on the Chinese in East Java, Suharto reached out to the Chinese business community.312 Indeed, beyond simply granting the Chinese economic freedom, Suharto affirmatively directed “lucrative rent-seeking opportunities to them.”313 In exchange, the Indonesian Chinese, with their “business expertise, international connections, and preexisting business links with the armed forces,”314 financed Suharto’s pet projects, both personal and public,315 while at the same time serving as “miracle workers” for Indonesia’s economic development.316 The resulting resurgence of Chinese economic dominance contributed to rising pribumi resentment and left the Chinese “uncomfortably dependent” on the aging Suharto for protection.317

308. RICKLEFS, supra note 283, at 287-89.
309. GOLAY ET AL., supra note 95, at 192-98; see also D.R. SARDESA, SOUTHEAST ASIA 266-67, 272 (4th ed. 1997) (describing “the economic morass and bankruptcy” brought on by Sukarno’s economic policies).
311. See RICKLEFS, supra note 283, at 291.
312. Mackie, supra note 283, at 120.
314. Id. at 55.
315. See id. at 54-55. Thus, Indonesian Chinese businessmen have reportedly covered over $400 million in foreign-exchange losses of the Bank Duta, which is indirectly owned by Suharto; paid for the Taman Mini theme park monorail as a favor to Suharto’s wife; financed a biography of Suharto; and, most recently, salvaged Indonesia’s newly established but collapsing petrochemical industry. See id.
317. Knecht, supra note 316, at 57.
Suharto’s resignation, coupled with the recent outburst of anti-Chinese violence, confirm that Indonesia remains enmeshed in the model dynamic described here.\textsuperscript{318}

Even short of abolishing legislatures or canceling elections, majority-elected leaders also can thwart democracy by permitting themselves to be bought off by the resented ethnic minority. Although a certain amount of corruption is perhaps inevitable, too much corruption effectively can subvert the political process, replacing democracy with kleptocracy.\textsuperscript{319}

The most extreme retreat from democracy in defiance of an ethnic majority occurs when an economically dominant ethnic minority itself seizes political power. Prime examples of autocratic rule by economically powerful ethnic minorities are South Africa under the apartheid regime;\textsuperscript{320} Rwanda and Burundi under Tutsi-dominated military rule;\textsuperscript{321} and decades of Kikuyu-dominated politics and exclusion in Kenya.\textsuperscript{322} As I have argued elsewhere, the social structure of many Latin American countries also can be viewed as a variation on the same dynamic.\textsuperscript{323}

In summary, the model hypothesizes that, in developing countries satisfying the model conditions, the combined pursuit of marketization and democratization will produce powerful pressures likely to lead to one or more of three outcomes: (1) an ethnically fueled backlash against markets; (2) a backlash against the resented minority; or (3) a retreat from democracy. The history of the developing world repeatedly and consistently has corroborated these predicted outcomes. Nevertheless, in the next Section I discuss potential counterexamples to the model. I then address certain factors that may complicate the application of the model to real-world cases.

\textsuperscript{318} Cf. Borsuk & Brauchli, supra note 185, at A8 (discussing Suharto’s resignation in the face of “deadly riots” and “social and economic chaos”); Schmetzer, supra note 185, at 4 (describing the recent violence targeting Indonesia’s “hated [Chinese] merchant class”).

\textsuperscript{319} See, e.g., Daniel King & Jim LoGerfo, Thailand: Toward Democratic Stability, J. DEMOCRACY, Jan. 1996, at 102, 115. A well known example of this phenomenon is the ostensibly democratic but notoriously corrupt Philippines regime of Ferdinand Marcos (before he declared martial law), which was very friendly to Chinese economic interests. See, e.g., STERLING SEAGRAVE, THE MARCOS DYNASTY 22-25, 286-88, 377-79 (1988) (describing the close personal and business links between Ferdinand Marcos and wealthy Filipino Chinese); see also infra Subsection IV.D.1.b.

\textsuperscript{320} See GURR & HARFF, supra note 139, at 24.

\textsuperscript{321} See Gourevitch, supra note 150, at 58-59.

\textsuperscript{322} See DONALD L. HOROWITZ, A DEMOCRATIC SOUTH AFRICA? 86 (1991). Needless to say, not all members of such politically dominant minorities benefit equally. Iraq’s ruling elite, for example, “consists of a small clique within the Sunni Muslim minority, most of whom come from Saddam Hussein’s hometown of Tikrit.” GURR & HARFF, supra note 139, at 24.

\textsuperscript{323} See Chua, supra note 18, at 274-76; supra notes 116-118.
D. Potential Exceptions and Complications

The model hypotheses are not intended to be universal laws of nature. Somewhere in the developing world a country may exist in which an impoverished majority feels no resentment against a rich, market-dominant minority—or at least not sufficient resentment to trigger the model outcomes. Indeed, this is arguably the case in present day Thailand and the Philippines, two often-cited “success stories” for free-market democracy in the developing world. Yet closer examination, however, reveals that these countries may not be exceptions to the model but instead may actually confirm it.

1. Possible Negative Cases

a. Thailand

In Thailand, which began democratizing in 1992 and has a more or less established market economy, relations today between the Thai majority and the economically dominant Chinese minority appear to be excellent. Historically, however, anti-Chinese resentment certainly existed. It was Thailand’s King Vajiravudh who coined the term “Jews of the Orient.” Moreover, beginning in the late 1930s and recommencing in the 1950s, the Thai government adopted a series of antimarket policies aimed at counteracting the growing economic power of the Thai Chinese.

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324. See, e.g., Carl Lande, Consensus Politics and Economic Growth, BUS. TIMES (Singapore), Jan. 28, 1995, at 3 (expressing optimism about the prospects for Philippine democracy and economic growth); Lennox Samuels, Thailand Looks West in Move to Democracy, DALLAS MORNING NEWS, Dec. 26, 1996, at 1A (noting that many people view Thailand as having successfully expanded “Western-style” democracy while maintaining robust economic growth).

325. See HAGGARD & KAUFMAN, supra note 3, at 103-06, 242-44, 248; Peter Eng, Thais Hesitantly Remember, BALTIMORE SUN, June 1, 1997, at 5F.

326. See, e.g., Horowitz, supra note 51, at 19 (noting that, compared to earlier decades, relations between Thais and Chinese are now “far less prone to conflict, and rates of intermarriage are higher than is typical of deeply divided countries”); Fallows, supra note 186, at 18 (“Compared to the situation in neighboring countries, racial frictions in Thailand are mild. . . . Chinese Thai and ethnic Thai alike seem to have agreed to act as if they share a common nationality.”).

327. VELLA, supra note 172, at 193-94.

328. These policies included the nationalization of Chinese-dominated industries, the creation of a state corporation designed to compete with Chinese in the rice, salt, tobacco, petroleum, and pork trades, and the enactment of a host of anti-Chinese commercial restrictions—all consistent with model outcome one. See GOLAY ET AL., supra note 95, at 300-05; DAVID K. WYATT, THAILAND: A SHORT HISTORY 254 (1984); Songprasert, supra note 143, at 119, 122-23; Ng Chee Yuen & Norbert Wagner, Privatization and Deregulation in ASEAN: An Overview, ASEAN ECON. BULL., Mar. 1989, at 212.
Starting in the 1930s, the Thai government began a systematic and often ruthless campaign to assimilate the Chinese into Thai society. The use of the Chinese language was restricted, Chinese schools were monitored, newspapers were shut down, and Chinese culture was generally suppressed. More subtle pressures for assimilation played a role as well. For example, in the 1960s and 1970s, the “ladder to success in [Thailand]... consisted of Thai education, Thai surnames, Thai language, and even intermarriage with Thai families.” In any event, for reasons about which many have speculated (including the close cultural affinity between the Thais and the Chinese as well as the supposed relative receptivity of Thais to foreigners), “Chinese have almost blissfully assimilated into Buddhist Thailand.”

In Thailand today, many Thai Chinese speak only Thai, intermarry with Thais, and consider themselves as Thai as their indigenous counterparts. Although half of Bangkok is thought to be of some Chinese ancestry, the Thai Chinese generally feel no allegiance to China. Perhaps most strikingly, the country’s top political leaders, including the current Prime Minister, are often of Chinese descent, although they frequently have Thai surnames and speak little or no Chinese. In fact, the current equilibrium in Thailand suggests a manifestation of model outcome two: To the extent the Thai Chinese have assumed the ethnic identity of the Thai majority, they effectively have been eliminated as a distinct ethnic minority. Even if this outcome proves stabilizing and seems benign, it is open to question whether an assimilationism achieved through decades of

329. See WYATT, supra note 328, at 254-55.
330. See id. Today, there are still restrictions on the use of the Chinese language. A local cable television network recently was forced to cancel its Chinese-language shows “after the government cited standing regulations limiting broadcasts to Thai or English with Thai subtitles.” VATIKIOTIS, supra note 186, at 23.
331. WYATT, supra note 328, at 292.
332. “Thais and Chinese began with the same ethnic roots. Most Thais descend from people who lived in southwestern China until they were forced southward by the Mongols.” G. Bruce Knecht, Thais That Bind, NAT’L REV., Nov. 21, 1994, at 58. Moreover, “[h]istorically, Thailand’s relations with China were close. Thai kings paid tribute to China’s medieval emperors. In return, China offered a lucrative trading relationship.” Michael Vatikiotis, Ties That Bind, FAR. E. ECON. REV., Jan. 11, 1996, at 24, 25. Finally, it is said that Thailand “absorbed Chinese culture as part of Thai culture.” VATIKIOTIS, supra note 186, at 24.
333. For a controversial comparison of the “receptivity” of the Thai as compared with the Javanese, see G. William Skinner, Change and Persistence in Chinese Culture Overseas: A Comparison of Thailand and Java, 16 J.S. SEAS SOC’Y 86 (1960).
335. See La Croix, supra note 153, at 221; VATIKIOTIS, supra note 186, at 22.
336. See VATIKIOTIS, supra note 186, at 24; Knecht, supra note 332, at 58.
338. See sources cited supra note 291.
cultural eradication and economic discrimination is an end that justifies its means.

A final recent twist is worth noting here. With the growing power of China in the last several years—not to mention expanding business opportunities on the mainland—an increasing number of Thai Chinese are reclaiming their Chinese identity. For example, many Thai Chinese are sending their children to newly-established Chinese language schools, visiting China in record numbers, and reassuming Chinese surnames.\textsuperscript{339} Whether this counterassimilationist trend in Thailand will eventually have a destabilizing effect remains to be seen.

b. The Philippines

Another possible counterexample to the model is the contemporary Philippines. While most Filipinos have some Chinese ancestry, there remains a discrete and insular “pure” Chinese minority who control an extraordinarily disproportionate share of the nation’s wealth, who speak Chinese, seldom intermarry with Filipinos, and generally are viewed as aggressive, secretive, and clannish.\textsuperscript{340} Yet, arguably, despite the presence of a market-dominant minority, marketization and democratization in the Philippines have successfully proceeded without triggering any of the negative consequences predicted by the model.\textsuperscript{341}

This argument, however, may reflect a naive view of democracy in the Philippines. Despite President Clinton’s recent praises,\textsuperscript{342} the Philippines may in fact exemplify a variant of model outcome three. Since colonial Spanish times, a small \textit{hacendero} class has controlled the country’s politics by using their land ownership and influence over tenants. Well before Ferdinand Marcos’s crony dictatorship,

\begin{quote}
[b]ehind the facade of democracy stood the fundamental fact that . . . [a] few self-aggrandizing rich families controlled every facet of society. Washington was proud that its former colony had become a showcase of political democracy and downplayed the fact
\end{quote}

\textsuperscript{339} See Vatikiotis, supra note 186, at 22-23.
\textsuperscript{340} See Richburg, supra note 102, at A25.
\textsuperscript{342} See Vitug, supra note 341, at 11.
that the same families who had dominated their respective provinces for centuries now controlled the Senate and the House of Representatives.\textsuperscript{343}

Moreover, despite her “People Power” platform, commentators agree that President Corazon Aquino—herself heir to a huge hacienda—“hardly made a dent in the personalistic, patrimonial system that was antithetical to democracy.”\textsuperscript{344} During Aquino’s presidency, “of the 200 elected congressional representatives, 132 came from established landowning families and another 39 were relatives of big landowners.”\textsuperscript{345} Not surprisingly, no significant land reform has yet occurred in the Philippines.\textsuperscript{346} Today, a few dynastic families continue to “support[] political democratization because [they] always ha[ve] been able to dominate the process and determine the outcome.”\textsuperscript{347} Moreover, many would argue that the relatively pro-Chinese, accommodationist policies currently favored by the Filipino political elite are not the product of a democratic process but rather, in Suharto-like fashion, have been bought and paid for by wealthy Chinese\textsuperscript{348}—again consistent with model outcome three.

Just thirty years ago most Chinese in the Philippines were restricted from citizenship and subjected to sweeping commercial restrictions.\textsuperscript{349} Even today, election leaflets are circulated with slogans such as “The Philippines Is Ours—Do Not Give It To the Chinese!”\textsuperscript{350} Hundreds of Chinese are kidnapped (and often brutally murdered) each year because “they have more finances, they have more money than the others.”\textsuperscript{351} The importance

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\begin{footnote}{343.} NEHER & MARLAY, supra note 341, at 54; see also Florian Coulmas, Democracy in Asia?, SWISS REV. WORLD AFF., Apr. 1997, at 4, 5-6 (stating that most voters in the Philippines are uneducated tenant farmers who are dependent on large landowners and who do not have the necessary political awareness to vote for their own interests); The Old Firms, ECONOMIST, May 11, 1996, at S10 (noting that historically land and political influence in the Philippines were vested in a small number of powerful Chinese, Filipino, and Spanish families, whose “wealth and power were rarely diluted”).

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\begin{footnote}{344.} NEHER & MARLAY, supra note 341, at 57.

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\begin{footnote}{345.} Id. at 58.

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\begin{footnote}{346.} See id.

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\begin{footnote}{347.} Id. at 54.

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\begin{footnote}{349.} See, e.g., WU & WU, supra note 296, at 53, 177-78.

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\begin{footnote}{350.} Richburg, supra note 102, at A25.

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\begin{footnote}{351.} Intimidated Chinese Community Easy Prey for Kidnappers, AGENCE FR.-PRESSE, Apr. 25, 1996, available in LEXIS, News Library, AFP File (quoting a Filipino policeman); see Morella, supra note 103.

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of these episodes should not be exaggerated. Nevertheless, it is too early to conclude that the Philippines is an exception to the model.

2. Complicating Factors

This Section will briefly raise some factors that may complicate the model's application to real-world cases. Needless to say, developing country demographics are never as simple as the model suggests. Quite often, no single ethnic group will represent a majority. This is true, for example, of Kazakhstan, which will be discussed below. Moreover, developing countries almost always comprise more than two ethnic groups, and ethnic rivalries will overlap and compete in complex ways.

In a developing country characterized by ethnic divisions, resentment against a prosperous minority may be overshadowed by much greater animus directed at another ethnic minority, which may or may not be economically dominant. Group dynamics may also be interdependent. Assume, for example, that in country X marketization benefits rival ethnic groups A and B equally. But assume further that historically, B has always been subordinate to ethnic group C in X's economic hierarchy. If marketization lifts B above C, it is possible that members of A will actually consider themselves less well off, despite the improvement of their own position, because of B's relative success.

Furthermore, as already suggested, it will not always be clear in a given developing country whether an economically dominant minority is market-dominant. This complicating factor, which will be discussed further below, bears profoundly on appropriate policy directions. In addition, ethnic dynamics are by definition not static. Thus an ethnic minority that is market-dominant now may cease to be so in the future for a variety of reasons.

Finally, the internal ethnodynamics of a marketizing country may be complicated by the presence of a substantial foreign investor community. As I have explored elsewhere, majority-based resentment and antimarket reactions often have been directed at these groups as well. Indeed, with some adjustments, the MDMs in the model could, in principle, be foreign investors who prosper visibly and disproportionately under marketization. The focus of this Article, however, is not on these "external foreigners" but

352. See infra text accompanying notes 498, 532.
353. Cf. McAdams, supra note 93, at 1023, 1084 (noting that individuals care deeply about intergroup status).
354. See infra Subsections V.B.3.b, V.C.3.b.
355. See Horowitz, supra note 163, at 113.
356. See Chua, supra note 18, at 263-66.
on internal ethnic minorities who often come to be regarded by the majority as "foreigners within." 357

E. General Policy Implications of the Model

Although the policy directions suggested by the model will be highly case sensitive (as Part V will illustrate), it may be useful to highlight here some general insights that the model produces. First and foremost, the model insists that marketizing and democratizing policymakers acknowledge and address the ethnodistributional consequences of their work. In particular, those shaping law and development today should pay careful attention to whether, in any given developing country, marketization favors certain ethnic groups over others. In developing countries in which a market-dominant minority is present, lawyers and policymakers must alert themselves to the strong likelihood that the combined pursuit of markets and democracy eventually will lead either to a retreat from markets, a retreat from democracy, or ethnic eliminationism. The core questions then become: Which of the three outcomes offers the lesser evils? Are there ways to contain and direct such outcomes? From this perspective, ethnically conscious market interventions—which may be viewed as a relatively benign manifestation of model outcome one—may well represent the best realistic alternative. Longer-term strategies would include efforts to study and redress the underlying causes of market dominance in particular cases.

At the same time, it is essential to try to determine whether, in any given country, a market-dominant ethnic minority exists. As already noted, many economically dominant minorities, including so-called "entrepreneurial" groups like the Chinese, may owe their economic success in part to nonmarket factors such as political favoritism or corruption. To the extent that this is the case, marketization may simply create opportunities for disadvantaged groups previously excluded from the market.

Finally, in countries with a market-dominant minority, it is imperative that lawyers and policymakers find ways to disperse effectively and visibly some of the market-generated wealth to the local population. Wealth spreading proposals run counter to the maximum marketization philosophy now in fashion. Measures to disperse share ownership invariably reduce the proceeds received by a privatizing government. More generally, strategies to build a broader-based public participation in the benefits of marketization often have significant short-term efficiency costs. Nevertheless, lawyers and policymakers who continue to ignore the ethnodistributional problems

357. Id.
of the developing world do so at their peril. With these considerations in mind, we turn now to the model applications.

V. APPLICATIONS

This Part will apply the model developed in Part IV to South Africa, Kazakhstan, and Vietnam. This selection of countries rests on a number of considerations. First, the applications will demonstrate that countries with very different cultures, geographies, and historical backgrounds manifest strikingly similar ethnoeconomic and ethnopolitical phenomena. Further, the case studies will demonstrate that the model is robust, applying to all developing states in which a market-dominant minority is present. At the same time, the applications will make clear that the widely varying reasons for different groups' economic dominance will have crucial policy and normative implications. Finally, South Africa, Kazakhstan, and Vietnam are all countries receiving extraordinary attention today from the international business and legal communities. Yet the fact that each is a potential site of collision among the forces of markets, democracy, and ethnicity has been (with the possible exception of South Africa) almost entirely overlooked. Although directions for policy formulation are suggested below, the following applications are not how-to guides. They are merely a first step toward candid analysis of the ethnic dimensions of law and development.

A. South Africa

1. Background

In early 1990, after decades of brutally enforced apartheid rule,\footnote{358. For discussions of apartheid, see generally MICHAEL ATTWELL, SOUTH AFRICA: BACKGROUND TO THE CRISIS 92 (1986); ALEX HEPPLE, SOUTH AFRICA 13-15 (1966); HOROWITZ, supra note 322, at 11; and MERLE LIPTON, CAPITALISM AND Apartheid 23 (1985).} Frederik de Klerk’s Afrikaner-based government took the world by surprise and initiated negotiations for democratization with the African National Congress (ANC),\footnote{359. Organized in 1912 (originally as the African Native National Congress) and legalized in 1990, the ANC was for decades “a liberation movement in exile.” Henrik Sommer, From Apartheid to Democracy: Patterns of Violent and Nonviolent Direct Action in South Africa, 1984-1994, 43 AFR. TODAY 53, 58 (1996); see generally T.R.H. DAVENPORT, SOUTH AFRICA: A MODERN HISTORY 236-37 (4th ed. 1991).} thus “deliberately embark[ing] on a process that would end white minority rule.”\footnote{360. Hermann Giliomee, Democratization in South Africa, 110 POL. SCI. Q. 83, 83 (1995). De Klerk’s decision, which earned him a Nobel Peace Prize, has been attributed to numerous factors, including the strangling economic effect of international ostracization; the collapse of the former Soviet Union, which had historically backed the ANC; the weakening white demographic base; the increasingly intense anti-apartheid position of Afrikaner church leaders and academics;} By the end of 1992, a deal had been struck. The
the lesson of Rhodesia (now Zimbabwe); and fear of Afrikaner extinction in the face of growing black education, awareness, and anger. See id. at 84-92.


363. Mbeki took over the presidency of the ANC in December 1997, when Mandela voluntarily stepped down. Mbeki is also deputy president of the state and is expected to succeed Mandela officially when he retires in 1999. See Bryan Pearson, Mbeki Tastes Victory, AGENCE FR.-PRESSE, Dec. 17, 1997, available in LEXIS, News Library, AFP File.


Although the new South African Constitution has been hailed as one of the most progressive in the world—establishing, among other things, the right to access to adequate housing, health care, food and water, and social security—\cite{367} the specific form of South Africa’s postapartheid economic and social policies remains to be seen.

2. Satisfaction of Model Conditions

South Africa easily satisfies most of the model conditions. Condition two (severe ethnic divisions) is almost certainly met; South Africa remains for the moment a nearly paradigmatic case of an ethnically divided society.\cite{368} Condition three (the presence of a market-dominant minority) is likely satisfied at present as well. The white minority, constituting roughly thirteen percent of the population but owning over eighty-five percent of the country’s arable land\cite{369} and, at least until recently, dominating all of the country’s largest conglomerates,\cite{370} represents an ethnic minority whose economic dominance would be almost certain to persist under free-market conditions in the near to midterm future. Condition four is also satisfied. Notwithstanding the significant (and potentially serious) divisions among black South Africans,\cite{371} they clearly represent an impoverished majority orientation of GEAR as a betrayal of the more socialist Reconstruction and Development Programme with which the ANC campaigned in the 1994 elections. See Patrick Bond, *Neoliberalism Comes to South Africa*, MULTINAT’L MONITOR, May 1996, at 8, 9, 12; William Mervin Gumede, *ANC’s African Nationalist Core Will Be Under Siege at Mafikeng*, SUNDAY INDEP., Nov. 2, 1997, at 5.

\cite{367}. See S. AFR. CONST. arts. 26, 27; Williams, *supra* note 361. The new South African Constitution also contains a Bill of Rights prohibiting discrimination by the state or any person against anyone on the grounds of “race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.” S. AFR. CONST. arts. 9(3), 9(4).

\cite{368}. Ian Shapiro and Courtney Jung have argued that South Africa is not a “fundamentally divided society,” pointing out impressive “commonality among [South Africans] of different races” and demonstrating that the extant cleavages in South Africa—whether racial, ethnic, religious, or linguistically based—are “anything but static.” Shapiro & Jung, *supra* note 163, at 241, 244. This may be true, but it is also true that black and white South Africans generally continue to live and work in a segregated fashion and that rates of intermarriage between the groups remain extremely low. In any event, for the purposes of the model it is sufficient that “racial divisions have played, and continue to play, a profound part in South African politics” and society, as Shapiro and Jung readily concede. Id. at 243.

\cite{369}. See Mutume, *supra* note 365; *South Africa’s Ag Minister Briefs Senate, supra* note 366.

\cite{370}. See Sudarsan Raghaven, *Black Owners Take a Piece of a Major South African Firm*, CHRISTIAN SCI. MONITOR, Sept. 16, 1996, at 7; Mutume, *supra* note 365; *South Africa’s Ag Minister Briefs Senate, supra* note 366. Historically, English-speaking South Africans dominated the country’s most lucrative economic sectors, including banking, insurance, big business, and the mining industry; this generally remains the case today, despite many Afrikaner movements early this century to promote “Afrikaner advancement into key positions of [economic] power and influence.” ATTWELL, *supra* note 358, at 72; see id. at 65-66, 71-72. On the other hand, Afrikaners, many of whom were historically farmers, still own most of South Africa’s land. See id. at 64-65; LIPTON, *supra* note 358, at 389 tbl.13.

\cite{371}. See HOROWITZ, *supra* note 322, at 71-75.
with claims to being the true owners of the nation. Hence ethnonationalist slogans, such as “Africa for the Africans” and “Africa is Black Man’s Country,” have persisted since the nineteenth century.

Interestingly, whether South Africa is economically underdeveloped (condition one) is a more complicated question, because apartheid essentially created two economies. Unlike most developing countries, South Africa began the process of industrialization, with the discovery of diamonds and gold, over a century ago. The country’s roads, railways, and hospitals are at least as impressive as those of most developed nations. Despite the heavy toll of international sanctions, South Africa has a per capita income of about $3,000, roughly comparable to an Eastern European country such as Hungary. By 1992, over eighty percent of South African whites were in high- or middle-income categories.

The picture is different, however, in black South Africa. The income of approximately seventy percent of black South Africans (fifty-seven percent of the total South African population) falls below the international minimum subsistence level, and over forty percent of the labor force (almost all black South Africans) is unemployed. More than half of all urban Africans still “live in backyard shacks or squatter settlements.” Infant mortality and life expectancy rates for black South Africans are on a par with those of the poorest developing countries. Predictably, South Africa has one of the least egalitarian wealth distributions in the world, with

372. This is true despite the fact that most Afrikaner families have long-established roots in South Africa. As Professor Horowitz has observed: Practically every step the Afrikaners took to secure their precarious collective existence had elements of both [nationalist aspiration and racial ideology] embedded in it. The Great Trek north from the Cape in the 1830s, for instance, was precipitated by the desire to escape some unpleasant features of British rule and threats to cattle and security from Africans on the eastern frontier. The Afrikaners thought they were creating or preserving a nation out of a people threatened with “extinction,” particularly by an increasingly powerful British colonialism, but they were simultaneously acting as conquerors of Africans.

373. Id. at 10 (internal citations omitted).

374. See Attwell, supra note 358, at 47-49, 52-53; Background on South Africa, 85 DEP’T STATE BULL. 8, 13 (1985).

375. It was in South Africa that some of the world’s first heart transplants were performed, see R.W. Johnson, Whites in the New South Africa, DISSENT, Summer 1996, at 134, 136, and even travel guides wax exuberant about the high quality of South Africa’s roads and railways, see, e.g., Fodor’s South Africa at xvii, 2 (1996) (describing South Africa’s roads as “immaculately paved” and a ride on the famous Blue Train as “glorious” and “a standard for luxury”).

376. See Huntington, supra note 28, at 312; Giliomee, supra note 360, at 98-99; South Africa’s Ag Minister Briefs Senate, supra note 366.

377. Giliomee, supra note 360, at 99. During the 1993 GATT negotiations, South Africa was classified as a “developed” rather than “developing” country. Bond, supra note 366, at 12.

378. See Giliomee, supra note 360, at 99; Ogden, supra note 365, at 48.


380. See id. On average in South Africa, whites live 11.5 years longer than blacks. See Mutume, supra note 365.
the top five percent of the population consuming more than the bottom eighty-five percent.\textsuperscript{381} This lack of broad economic development makes it plausible to view South Africa as an economically underdeveloped country for purposes of the model.

3. \textit{Analysis}

Assuming that it qualifies as a developing country, South Africa is a pivotal test case for the model. Marketization and democratization are simultaneously taking place in the presence of a resented, market-dominant white minority. Accordingly, despite the remarkably peaceful transition to democratic rule, South Africa’s future rests precariously on its ability to confront and address the enormous instability created by the black majority’s empowerment in the face of outrageously disproportionate white wealth.

Given South Africa’s racial history and persisting ethnoeconomic inequities, the chances of a “democratic miracle” in which voters “become policy- and issue-oriented . . . and shed their racial or ethnic concerns”\textsuperscript{382} is practically nonexistent. Similarly, there is virtually no prospect of a “market miracle,” which in South Africa would require fantastic improvement in the black economic sectors (fueled perhaps by booming black corporations\textsuperscript{383} and an explosion in the employment of black workers coupled with massive wealth redistribution), such that black South Africans are generally lifted out of poverty. Although it is too early to draw final conclusions, and notwithstanding some impressive achievements,\textsuperscript{384} “the vast majority of black South Africans are no better off economically [today]
than they were three years ago.” Further, “the apartheid-era ghettos of the past” are still swelling by roughly a million people a year. If anything, as many commentators have warned, “reliance on the market at the expense of government direction and intervention,” while delighting domestic and international bond traders, will very probably exacerbate the plight and frustration of the great majority of black South Africans in the near to midterm. Meanwhile, expectations among the black majority are dangerously unrealistic.

The model predicts that, absent a stunning transformation in black South African economic prospects, powerful pressures will push South Africa toward one or more of the following possible outcomes: an ethnically fueled antimarket backlash, actions aimed at eliminating the white population, or a retreat from democracy. The following discussions very briefly suggest how the model predictions are beginning to play out in the South African context.

a. Antiwhite, Antimarket Backlash

The aggressive and popular efforts by the South African government to attract foreign investment and promote trade liberalization have prompted many international commentators to assert that the commitment to unfettered markets “has never been as dominant in South Africa as it is today.” Although the South African government has little incentive to dispel such a perception among the international community, this is not entirely accurate. While vigorously courting international markets on the one hand, the South African government is on the other hand intervening in South Africa’s internal markets in significant, ethnically motivated ways, consistent with the model’s first outcome.

For example, the government is in the process of adopting, along with land restitution policies, certain restrictions on the use and alienability of

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385. Ogden, supra note 365; see also Kurt Shillinger, Mandela Passes ANC Torch; Successor Aims for Development, BOSTON GLOBE, Dec. 21, 1997, at A2 (noting that employment levels in South Africa have declined over the past 18 months).
386. Ogden, supra note 365.
387. Bond, supra note 366, at 8.
388. In a pre-1994 election poll, 81% of black South Africans “said that they expect[ed] the new government to make sure that ‘people like me can live like most whites.’” Hermann Giliomee & Charles Simkins, The Dominant Party Regimes of South Africa, Mexico, Taiwan and Malaysia: A Comparative Assessment, in THE AWKWARD EMBRACE, supra note 382 (manuscript at 1, 24).
389. Bond, supra note 366, at 9; see also Newton Kanhema, Mbeki Predicts Bright Economic Future for South Africa, AFR. NEWS, Feb. 4, 1998, available in 1998 WL 6607901 (noting that Deputy President Thabo Mbeki is “increasingly optimistic” about South Africa’s ability to attract foreign investment); South Africa’s Ag Minister Briefs Senate, supra note 366 (“[T]rade and investment promotion are increasingly important thrusts of our Government.”).
rural, and thus principally Afrikaner, land.  

Specifically, the draft Extension of Tenure Security Bill proposes that where people live on rural land with the consent of the owner or person in charge, they may only be evicted if two criteria are met. First, the occupier’s right of occupation must be lawfully terminated—for example, through a fair dismissal or the expiry of a contract. Second, the court must decide whether (and if so when) eviction is justified.

....

At present, the law allows a land-owner to dump on the side of the road people who have lived on the land for decades, who have nowhere else to go, and who have done nothing to cause or justify an eviction. Most reasonable people would agree that this is not just. The law must be changed.

The proposed restrictions, which also cover black tribal land but which the government concedes would almost exclusively affect whites, have generated bitter opposition from some white landowners, who claim that the draft bill “boils down to blatant discrimination. It establishes completely new rights at the expense of existing property rights.”

At the same time, the South African government is expected in the near future to pass a national water bill radically altering the existing structure of water ownership and access. As described in the White Paper on a National Water Policy for South Africa, during the apartheid regime “access to water for use in agriculture [was] even more skewed than access to land.” For decades, riparian laws (tying use of water to ownership of land) were enforced, and dams, pumping stations, and pipelines were built to divert South Africa’s water to “a privileged minority of private land owners.”

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391. Id.
392. In theory, the draft bill applies to all rural land owned by whites or blacks. According to the government, however, principally white farmers will be affected, because of the following “paradox”: Many more people live [on rural black tribal land] than on [white] commercial farms. But there are very few evictions from tribal land. Although they are the most crowded areas of the country... they continue to give shelter to people evicted from “white” land. They suffer the results of eviction—they are seldom the cause of eviction. The reason is that people in these areas live according to an ethic which accepts that you cannot willy-nilly dump people with nowhere to go.
393. Id. at 5.
395. Id. at 14.
As a result, between twelve and fourteen million black South Africans are currently “without access to safe water and over 20 million without adequate sanitation.”

The proposed water law would abolish the existing riparian system and effectively nationalize “South Africa’s scarce water resources” with the government serving “as custodian of the ‘public trust.’” Current water users would then be required to apply to the government for a license in order to continue their existing water use. Water users would pay for their use of water according to a variable pricing system. An exception would be made for water “for basic human needs,” which would be provided free of charge. Although water resources are often state-owned and state-distributed even in highly marketized economies, the proposed nationalization and redistribution of water in South Africa would negatively affect whites (principally Afrikaners) almost exclusively for the benefit of nonwhites. Indeed, the proposed water reforms are aimed explicitly at reversing the “inefficient racial spoils system” of the apartheid era, which eroded significantly “both the right to dignity and the right to life amongst the Black majority.”

Finally, the recently released Employment Equity Bill (substantially patterned on the Malaysian affirmative action model) is expected to come before Parliament this year. Although the proposed law does not impose quotas for black representation in the workplace, it “requires every business to have an affirmative action plan” directed at “inclusion in the economy of those sections of the population previously excluded.” The bill, which many say “opens up a vast sphere of state intervention,” is “vehemently”

396. Id. at 9.
397. Id. at 14 (citation omitted). The government’s current position is that the proposed restructuring of South Africa’s water system, which aims at “redress[ing] the results of past racial discrimination,” will not require compensation to existing water users under the property clause of the new South African Constitution. Id. at 8. For an excellent historical and philosophical discussion of the property clause of the South African Constitution, see generally Andre J. Van der Walt, Property Rights, Land Rights, and Environmental Rights, in RIGHTS AND CONSTITUTIONALISM: THE NEW SOUTH AFRICAN LEGAL ORDER 455 (Dawid van Wyk et al. eds., 1995).
398. See DEPARTMENT OF WATER AFF. & FORESTRY, supra note 394 at 4, 17. Thus, “[w]ater use allocations will no longer be permanent” but instead will endure for a reasonable period. Id. at 4. “If no application is made for the registration of an existing water-use, it will be assumed that that use has been abandoned . . . .” Id. at 18.
399. See id. at 23.
400. Id.
401. Id. at 7.
supported by the black middle class and opposed by the business community.404

To varying degrees, all these measures represent derogations of free-market policies—whether by curtailing the conventional bundle of rights of landowners, by nationalizing resources, or by restricting employment decisions. They are also all ethnically driven, even if occasionally drafted in formally race-neutral language. If, however, the economic situation of the black African majority does not improve significantly in the near future, the retreat from market policies in South Africa may well begin to take a more extreme form.

Nationalization and expropriation were for years—and until quite recently—a central plank of the ANC.405 While it is currently popular to view nationalization as a phenomenon of the past, as I have discussed above and elsewhere, in the developing world waves of privatization and free-market euphoria have repeatedly given way to renationalization programs expressly targeting wealthy ethnic minorities.406 In South Africa, privatization initiatives over the last several years have met with significant opposition, principally from the influential trade unions.407 The politically powerful Congress of South African Trade Unions (COSATU) continues to advocate “a bigger, not smaller, public sector to satisfy the country’s huge social and economic needs.”408 COSATU has also ridiculed big business efforts to transfer wealth to blacks as “no more than corporate camouflage which retains power and control in the small group of shareholders and their directors.”409 Support for nationalization among black South Africans remains substantial.410

405. See ATTWELL, supra note 358, at 203; Giliomee, supra note 360, at 97; Andi Spicer, ANC Mining Industry Plans Spark Concern, INTER PRESS SERV., Mar. 25, 1994, available in 1994 WL 2583793; South Africa: ANC Rethink on Nationalisation, AFR. ECON. DIG., Nov. 19, 1990, available in LEXIS, World Library, TXTAFR File. Indeed, the Freedom Charter, still “the closest thing to a statement of principles by non-white South Africa,” specifically calls for the transfer of the country’s “mineral wealth,” banks, and “monopoly industry” to “the people as a whole.” ATTWELL, supra note 358, at 90 (quoting from the Freedom Charter). The Freedom Charter was drafted in 1955 by the ANC and other nonwhite groups. After decades of “semi-obscenity,” recent events in South Africa have given the Charter renewed status. See id.
406. See Chua, supra note 18; supra text accompanying notes 248-262.
408. Simon, supra note 407, at 4; see also Bond, supra note 366, at 14 (stating that COSATU has advocated job creation by reorienting the economy to meet basic needs production). COSATU has also called for “more cautious engagement with the world economy.” Bond, supra note 366, at 14.
410. See Giliomee & Simkins, supra note 388 (manuscript at 29); Gumisai Mutume, Thumbs Down for Privatization, INTER PRESS SERV., July 1, 1997, available in 1997 WL 7076286.
b. Eliminationist Strategies

At the same time, as long as terrible black poverty and extraordinary white wealth persist, one would also expect to see the beginnings of antiwhite eliminationism. Although the government has not wavered from its commitment to a multiracial democracy,411 there long has been in South Africa an influential, exclusionary strand of African nationalism, according to which indigenous Africans are the sole legitimate owners of the soil.412 As late as 1989, participants at the inaugural meeting of the Pan-Africanist Movement chanted, “One settler—one bullet!”413 At the moment, these Africanist movements generally are perceived as a fringe phenomenon, supported by a relatively small percentage of the population.414 Moreover, despite the recent crime wave in South Africa,415 there have been remarkably few reports of explicitly antiwhite violence. Nevertheless, there are plenty of signs already of black backlash against white religions,416 language,417 codes of morality,418 teachers,419 pedagogy,420 television,421 and

Winnie Madikizela Mandela, who still has adoring populist followers, continues to attack the government’s economic gradualism and instead champions more immediate delivery of economic and social benefits. See Gumede, supra note 366, at 5. Mrs. Mandela recently declined to run for the post of ANC deputy president. See Alec Russell, Winnie Mandela Bows out of Race for Key ANC Post, DAILY TELEGRAPH (London), Dec. 18, 1997, at 17.


412. See HOROWITZ, supra note 322, at 13-15. As early as the 19th century, a movement had begun to “keep ‘Africa for the Africans.”’ Id. at 13. In the 1950s, “[t]o the ANC’s declaration in the Freedom Charter of 1955 that ‘South Africa belongs to all who live in it, black and white ... ,’ the Africanists rejoined in their journal that ‘[t]he African people have an inalienable claim on every inch of the African soil.’” Id. at 13-14 (internal citation omitted). In the seventies, “Black Consciousness” leaders repeatedly declared that South Africa “belongs exclusively to Blacks.” Id. at 15. Even among Africanists, however, there is disagreement over the ultimate place of whites in South Africa. See id. at 6, 15.

413. Id. at 14.

414. On the other hand, commentators have suggested that “the ANC has increasingly abandoned its 1994 election appeal of nonracialism for an explicit call to African solidarity.” Gillonoe & Simkins, supra note 382 (manuscript at 344).


416. Dalí Tambo, the host of a popular television show, criticized Afrikaner Christianity as homophobic, “primitive, Calvinist and Victorian, a spiteful, angry, intolerant culture. ... And totally hypocritical.” Bill Keller, Apartheid's Gone, and Anything Goes, N.Y. TIMES, Dec. 25, 1994, at A7; see also J.P. Petres, Suicide or Genocide? in HISTORY FROM SOUTH AFRICA: ALTERNATIVE VISIONS AND PRACTICES 34-35 (Joshua Brown et al. eds., 1991) (discussing Xhosa suspicions about white missionaries) [hereinafter HISTORY FROM SOUTH AFRICA].

417. Strikingly, black hostility has been directed almost exclusively against Afrikans (the “language of the oppressor”), as opposed to English, which is generally accepted as the “business” language. See Rohan Minogue, Afrikaners in Rare Unity over Their Language, DEUTSCHE PRESSE-AGENTUR, Aug. 5, 1994, available in LEXIS, NEWS Library, ARCNWS File; Patrick McDowell, Language Battle Heats up as TV Switches Tongues, ASSOC. PRESS, Feb. 4, 1996, 1996 WL 440998.
the “White way of life” generally. Perhaps as a result, “[m]any suburban whites live in jail-like homes guarded by vicious dogs, razor wire, and armed security guards summoned by panic buttons.” Thus, despite the government’s assurances roughly 18,000 whites, many of them affluent and educated, leave the country each year. Although the significance of isolated incidents should not be exaggerated, it remains telling that a leading ANC official, stopped last November for driving while intoxicated, could tell the policeman: “When Mandela dies, we will kill you whites like flies.” It takes little imagination to envision the emergence of charismatic African leaders espousing eliminationist policies. If not outright violence against whites, these policies might include laws targeting the public use of Afrikaans, suppressing white schools and churches, and otherwise treating whites as cultural or political enemies within the state.

418. Black South Africa has reacted in many ways to the “intolerant” and “hypocritical” Afrikaner morality code, for example, by legalizing abortion, homosexual activity, and sexually explicit films and magazines. Keller, supra note 416, at A7.


420. See Melanie Walker, History and History Teaching in Apartheid South Africa, in HISTORY FROM SOUTH AFRICA, supra note 416, at 268, 269; Anton Christen, South Africa After Apartheid, SWISS REV. WORLD AFF., May 1996, at 6, 7 (noting recent demands that the University of Witwatersrand renounce its “superfluous, colonialistic and alienating” image as a liberal, English-speaking university).


422. There is a small but growing movement, for example, to introduce Ubuntu—“the traditional Black African sense of the collective, according to which a person is a true human being only through and with others”—into the workplace, university education, and business management practices. See Christen, supra note 420, at 7. In response, numerous Afrikaner-based organizations have sprung up to fight for “the preservation of Afrikaner culture.” Gumisai Mutume, Afrikaners Try to Keep Flag Flying, INTER PRESS SERV., Jan. 26, 1996, available in LEXIS, News Library, INPRES File.

423. Matloff, supra note 415, at 7.

424. Like Mandela before him, Mbeki advocates “a non-racial society [that] is in the interests of both black and white.” Pearson, supra note 363. At the same time, Mbeki has publicly warned whites that unless they “voluntarily” share their wealth, “they could face ‘race riots’ in three to five years.” Id.


c. Antidemocracy Backlash

A retreat from democracy in South Africa could take at least three different forms. First, the white minority could reseize power militarily and either restore apartheid nationally (highly unlikely) or establish a prosperous white homeland in South Africa. Second, an ethnonationalist African leader could overthrow the current market-friendly, accommodationist, democratic regime. Finally, an accommodationist government could continue liberal, pro-market policies by defying increasingly hostile majority will and suppressing electoral competition. Along these lines, several points about South Africa's current political structure are worth raising.

To begin with, South African parliamentary elections are conducted wholly by proportional representation according to a party-list method. Thus, in order to be elected to Parliament (which requires a high ranking on the party list), local politicians must be well regarded among the leaders of the party hierarchy. This national party-list method may give the current ANC leadership a means of sifting out ethnonationalist extremists in a way that would not be possible with a constituency-based representation system (although obviously the party list in the end cannot be at complete odds with popular support). In addition, many political analysts in South Africa argue that undemocratic internal political procedures of the ANC have allowed the current leaders to sweep away all formidable extremist opposition within the party structure. Some commentators fear that the excessive dominance of the ANC may well turn South Africa into a variant of a one-party dominant regime similar to those historically in place in countries like Mexico or Taiwan. On all of these points, further inquiry is required.

428. See Johnson, supra note 375, at 137. Calls by Afrikaner separatists for the establishment of a "Volkstaat" or Afrikaner homeland—technically permissible under the new constitution—have not diminished. See Christen, supra note 420, at 6; Michael Hamlyn, New Constitution a Human, Liberal and Comprehensive Document, NEW STRAITS TIMES, May 9, 1996, at 1.

429. In recent years, the Pan African Congress and COSATU have become increasingly critical of South Africa's economic and social direction. See Lewthwaite, supra note 427; Mandela Faces Friction, BALT. SUN, July 9, 1997, at 12A. One black African labor leader recently suggested that "the ANC's soul [may] already [be] too far lost, given the policies it has adopted since coming to power." A Labor Perspective on the South African Economy, supra note 407, at 1A.

430. See Giliomee & Simkins, supra note 388 (manuscript at 17-18, 44).

431. According to Professors Giliomee and Simkins, recent developments in South Africa indicate a legislature that is neither strong nor independent and "leadership intolerance of any criticism of an ANC minister by representatives of the party regardless of the charges levelled against him or her." Id. (manuscript at 41).

432. See Giliomee, supra note 360, at 103-04. For an illuminating comparative analysis, see generally THE AWKWARD EMBRACE, supra note 382.
4. Directions

None of these warnings is new for South Africa. On the contrary, most of these troubling outcomes have already been prophesied, with varying degrees of doomsaying, in the burgeoning literature on post-apartheid South Africa. The model’s distinctive contribution here lies in the counsel it offers to lawyers and policymakers participating in South Africa’s transformation. As already noted, prevailing law and development orthodoxy effectively presumes that the cures currently prescribed for economic and political underdevelopment—markets and democracy—will also cure ethnic conflict. By contrast, the model insists that lawyers and policymakers recognize that marketization and democratization—to the extent that they are successful, to the extent that they do just what they are supposed to do—will, in countries like South Africa, in fact tend to catalyze ethnic conflict in a highly determinate and predictable fashion. Markets and democracy cannot be regarded as solutions to the dangers of ethnic strife in a country like South Africa. They are, at least in the short and midterm, part of the problem.

What then is the solution? One position is that the best way to address the dangers of racial strife is through race neutrality. On this view (which has a familiar United States counterpart) race-based interventions necessarily mirror the race-based apartheid regime, invariably perpetuating destructive racial politics and racialist thinking. The policy thrust of this view is that South Africa should address its problems not through ethnically based interventions into the marketplace, but rather through race-neutral progressive taxation, social welfare policies, and the other conventional components of the liberal activist state, which, over time, will be the best corrective for economic imbalance and racial strife.

This view, which perhaps seems appealing from afar, runs a tremendous risk of blindness—almost of willful blindness—to South African realities. Post-apartheid South Africa already has progressive


434. See, e.g., NATHAN GLAZER, AFFIRMATIVE DISCRIMINATION: ETHNIC INEQUALITY AND PUBLIC POLICY 168-95 (1975) (arguing that affirmative action in the United States stigmatizes minorities and entrenches invidious stereotypes); Antonin Scalia, Commentary, The Disease as Cure, 1979 WASH. U. L.Q. 147, 154 (stating that the U.S. affirmative action system “is based upon concepts of racial indebtedness and racial entitlement rather than individual worth and individual need; that is to say... it is racist”). See generally Jed Rubenfeld, Affirmative Action, 107 YALE L.J. 427, 444 (1997) (laying out the now familiar “move[s] and countermove[s] in the colorblindness debate”).
taxation, and the government is probably doing as much as it currently can with respect to social welfare programs. Conceivably, in the best of worlds, race-neutral policies might be the optimal approach to South Africa's difficulties over a long stretch of time. But when it is remembered that the townships today are not shrinking but growing—at a rate of a million black Africans a year—pursuing the “best of all worlds” solution becomes a luxury South Africa is unlikely to be able to afford.

If in another five or ten years it remains the case (as it quite possibly will) that the “vast majority of Blacks are no better off than they were,” there is a very real danger that a black majority will find it intolerable to live under a “race-neutral” political and economic system whose reality is massive black immiseration and massive white wealth. Obviously, in a country as dependent on global markets as South Africa, “the government cannot . . . violate rights, particularly property rights, without incurring serious financial and economic costs.” Nevertheless, the notion that the black majority will act as rational, long-term wealth-maximizers, cognizant that antiwhite measures may discourage foreign investment, is unrealistic. Indeed, from the point of view of township inhabitants, unlikely to benefit from marketization and globalization within their lifetimes, extremist measures might in fact be “rational.” In any event, whatever the merits of a race-neutral approach in a country like the United States, it may be in South Africa the best recipe for racial violence, expropriation, and an eventual collapse of democracy.

At the same time, it should not be overlooked that the recently adopted South African Constitution gives protections to minorities that in principle would guard against confiscatory practices and racial eliminationism. In comparison with most developing countries, South Africa is unusual in having an independent constitutional court that is generally perceived to be politically legitimate. Such an institution gives South Africa a potential line of defense against ethnonationalist abuses that is generally unavailable in the developing world. Nonetheless, it is surely naive to expect a

436. See Ogden, supra note 365.
437. Id.; see Shillinger, supra note 385, at A2.
438. Imports and exports currently represent more than 60% of South Africa's gross domestic product. See Giliomee & Simkins, supra note 388 (manuscript at 24).
439. Id. (manuscript at 40).
440. An excellent recent exploration of the relationship between political backlash and economic efficiency can be found in Roe, supra note 92, at 218-21. Professor Roe writes that “in some systems, politics may lash back,” id. at 218, and “disrupt otherwise efficient [economic] arrangements . . . [A]nd this backlash potential complicates economic analysis.” Id. at 217-218.
441. See, e.g., S. AFR. CONST. arts. 9, 11, 12, 20, 25.
442. See Giliomee & Simkins, supra note 388 (manuscript at 39).
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constitutional court only a few years old to stand against an incited black majority—particularly if that court has been insistent on race neutrality. Zimbabwe also had a longstanding tradition of constitutionalism, and ethnonationalist nationalizations are occurring there even today.444

If the model applies to South Africa, the somber reality is that the nation will almost certainly be forced down one (or more) of the three paths discussed above: a retreat from democracy, an ethnically targeted retreat from free-market policies, or attempts to eliminate the white population. From this point of view, carefully tailored, ethnically conscious market interventions might well be the best of the “second best” solutions available to South Africa. For example, however distasteful they may be to some Westerners, ethnically based employment preferences might be the best way of forestalling full blown nationalization or antiwhite violence. Indeed, such initiatives may be responsible in part for the success South Africa has had thus far in maintaining racial accommodation.

It is far from clear, however, that the current measures will be sufficient to resist the powerful antiwhite, antimarket pressures that undoubtedly will intensify unless the government finds ways to spread market-generated wealth rapidly, visibly, and significantly to the black African population. If the model is correct, the South African government should be championing broad-based black participation in the marketization process, even at the expense of short-term growth. It should be working to disperse the benefits of privatizations, international joint ventures, and the like to the great majority of blacks who continue to live in the country’s grossly impoverished rural areas or urban slums. This might be achieved through subsidies and loans or, more controversially, through quotas or ownership restrictions.445 Unfortunately, the government has abandoned many of its more ambitious redistributive proposals over the last few years, including programs to provide low-cost housing, promote worker ownership, and make cheap credit widely accessible.446

Yet even these kinds of interventions—already opposed by many in the business community on grounds that they “will balloon the government deficit”447—may not be enough to assure the sustainability of free-market democracy in South Africa. It may be that the only way to dismantle the conditions of ethnoeconomic violence in South Africa is through more radical transformations, perhaps along the lines of Roberto Unger’s visionary program to reimagine the institutional arrangements of markets

444. See source cited supra note 262.
445. See Chua, supra note 18, at 293. This approach has some precedent in Latin America, where “popular capitalism” initiatives have been tried on a limited basis with considerable success. Id.
446. See Bond, supra note 366, at 10-12.
447. Id. at 12.
and democracy. Other radical, innovative reforms—for example, Andre van der Walt’s challenge to the supposed race neutrality of the entire “common law ownership paradigm”—have also been proposed.

Finally, along with ethnically conscious retreats from the market, there might also be room for ethnically conscious interventions in the democratic process. A growing literature, for example, explores the possibility of adjusting districting rules and vote counting rules—in a way consistent with the principle of one man, one vote—to ameliorate ethnic tensions. In addition, some scholars and policymakers have advocated as important for preserving ethnic stability various “power-sharing” devices to “counteract the will of the majority” and to ensure protection of the white minority. Although these avenues are worth considering, the thrust of the model is that if South Africa’s extreme ethnoeconomic imbalances are not vigorously addressed, the prospects of creating interracial coalitions by tinkering with the democratic process almost certainly will be dismal.

B. Kazakhstan

1. Background

Kazakhstan is a large country—larger than all of western Europe—with a small population. It is prodigiously rich in oil, gas, and mineral deposits. Kazakhstan is also landlocked, sandwiched between Russia and China, with Iran, Pakistan, and war-torn Tajikistan to the south.

448. See UNGER, supra note 2 (manuscript at 108-208).
450. See, e.g., HOROWITZ, supra note 10, at 628-52 (discussing the roles that different electoral systems have played in fostering or retarding ethnic tensions).
451. Thomas Koelble & Andrew Reynolds, Power-Sharing Democracy in the New South Africa, 24 POL. & SOC’Y 221, 221 (1996); see HERIBERT ADAM & KOGILA A. MOODLEY, SOUTH AFRICA WITHOUT Apartheid: DISMANTLING RACIAL DOMINATION 207, 242-43 (1986); HOROWITZ, supra note 322, at 137-39; AREND LUPHART, POWER-SHARING IN SOUTH AFRICA 6-9, 80-81 (1985). In two influential essays, Jung and Shapiro opposed the inclusion of mandated power-sharing arrangements in the permanent South African Constitution, arguing that such arrangements tend to discourage effective opposition institutions, which are “basic ingredients of a viable democracy.” Jung & Shapiro, supra note 433, at 270; see Shapiro & Jung, supra note 163, at 238-39. As noted earlier, the new South African Constitution actually abandoned the power-sharing provisions included in the interim constitution. See supra note 361.
453. In addition to immense oil and gas reserves, Kazakhstan is the major source of nonferrous metals (including zinc, lead, titanium, magnesium, and chromium) in the former
The consensus is that the Kazakh people formed in the mid-fifteenth century by breaking away from Uzbek tribes. By the late seventeenth century, Kazakh hordes controlled most of what is now Kazakhstan. In the early nineteenth century, Russians began settling in the northern Kazakh steppe. The two cultures clashed head-on. The Kazakhs were "half-savage" nomads, defined by their migratory, livestock-breeding way of life. Russian farming settlements thwarted Kazakh migration by monopolizing potential pasturelands and precious water sources, provoking Kazakh resentment and raids.

With Russian expansion of trade in the Middle and Far East, pacification of the Kazakh steppe became an imperial priority. By the 1850s, all of present-day Kazakhstan had been conquered.

Prerevolutionary Kazakhstan was a cauldron of discontent, marked by widespread seizure of land by Russian authorities, forced sedentarization of Kazakhs, Kazakh revolt and rebellion, and fierce Russian retaliation in which thousands of Kazakhs were killed or forced into exile.

After the Russian Revolution, first Lenin and then Stalin adopted a "divide and conquer" strategy in Central Asia. Hoping to counteract the rise of nationalism and Islamic fundamentalism in the region, Moscow in
1924 created—paradoxically, as many commentators have noted—the new Kazakh, Kyrgyz, Tadzhik, Turkmen, and Uzbek Soviet Socialist Republics. For Kazakhstan, the Soviet period was a combination of Russian exploitation and significant economic development. Moscow's policy was to use Kazakhstan "as a kind of contiguous Third World" source of raw materials and as a dumping ground for prisoners and undesirables. Soviet collectivization policies (between roughly 1926 and 1939) led to a shocking 1.5 million Kazakh deaths, attributable in some cases to violence but more commonly to starvation. At the same time, starting in the 1950s, Soviet economic policies brought to Kazakhstan agricultural modernization, numerous heavy industries, and science and research facilities such as the Soviet space exploration center in Baikonur—along with millions of Russians and Ukrainians and terrible ecological destruction.

Since independence, Kazakhstan under Nazarbayev has embarked on aggressive marketization. In the last several years, the government has eagerly embraced IMF reforms, adopted over 130 market-friendly laws, expanded trade vigorously, privatized (after a slow start) most of

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1920s, and then from Latin to Cyrillic beginning in 1940. See CENTRAL ASIA, supra note 120, at 79-82.

468. Many have observed that Soviet nationality policies, over a span of 70 years, produced "two outcomes antithetical to the officially proclaimed goals of merging nationalities and transcending ethnic distinctions." Philip Goldman et al., Introduction to FROM UNION TO COMMONWEALTH, supra note 121, at 1-2. First, these policies led to the emergence of nations and national identities in many communities that previously had not achieved ethnic consciousness. Second, they created in the new republics the preconditions for independent existence, including their own political elites and educated middle classes and their own administratively defined territories. See id.

469. See GLEASON, supra note 461, at 49-50; JACK F. MATLOCK, JR., AUTOPSY ON AN EMPIRE 34-36 (1995). Thus, among the Central Asians, previously "an undistinguished mass of various self-identifying tribes or city-states, ...[c]losely related nomadic families who had differed from one another primarily in the manner of their migrations suddenly received passports that identified them as 'Kazakhs' and 'Kyrgyz,' and found themselves living in neighboring republics." Olcott, supra note 119, at 211-12.

470. Olcott, supra note 119, at 213. These unwanted groups included deported Chechens, Crimean Tatars, Volga Germans, and other North Caucasian peoples. See id.

471. See GLEASON, supra note 461, at 52; Olcott, supra note 119, at 213. A large swath of land around Semipalatinsk, the Soviet Union's primary nuclear weapons testing site, has been rendered largely uninhabitable. See GLEASON, supra note 461, at 19. In addition, the Aral Sea has been reduced to half its former size by irrigation and unwise damming. See id. Indeed, industrial pollution is ubiquitous. See id.

472. In contrast to the Baltic and most of the Slavic republics, none of the Central Asian states were eager for statehood. Kazakhstan declared independence in 1991; it was the last of the former Soviet republics to do so. See GLEASON, supra note 461, at 3.


474. See Sander Thoenes, Trust of People Key to Reform, FIN. TIMES, July 11, 1996, at 3. These laws, among other things, streamlined the tax code, permitted repatriation of profits, liberalized prices, and established an autonomous central bank. See, e.g., Kazakhstan's Mineral
its industrial giants, including the country's major oil and gold facilities, and signed dozens of multimillion dollar international deals. By and large, these marketization measures have been successful; most international observers today regard Kazakhstan as "the wealthiest...and the most politically stable" of the Central Asian republics and "a leading player" in the post-Soviet world.

Notwithstanding the strikingly effective "sociocultural—and particularly linguistic—Russification" of Kazakhstan during the Soviet era (even today many urban Kazakhs speak only Russian), there can be no doubt that anti-Russian feeling exists among Kazakhs. Perestroika exposed "the false accusations, purges, deportations, and [mass] deaths" inflicted on the Central Asian people during the Stalin era, provoking bitter and widespread outrage. Independence in Kazakhstan (as in the other post-Soviet republics) brought the enactment of exclusionary language, citizenship, and education policies, as well as a revival of Kazakh culture.


476. By the first half of 1995, all export quotas had been abolished and most import and export licensing requirements loosened or eliminated. See Transition Indicators: Kazakhstan, supra note 475, at 45. The Nazarbayev government has also pursued new export routes, for example, by opening a railway to the Chinese port of Lyanyungan, by concluding an agreement to build a pipeline from Tengiz to the southern port of Novorossisk, and by reaching an agreement—over the protests of the United States and Russia—to send oil to Iran for refining. See Robinson & Thoenes, supra note 474, at 3; Rumblings from Kazakhstan, JANE'S FOR. REP., Feb. 6, 1997, available in LEXIS, News Library, CURNWS File; Sander Thoenes, Tough at Home, Tactful away, FIN. TIMES, July 11, 1996, at 3. The government has also sought trade and investment relationships with Singapore and Malaysia, among others. See, e.g., Kazakhstan Enters into Investment Pact with Malaysia, NEW STRAITS TIMES, May 28, 1996, at 28; Grace Sung, Kazakhstan President Urges S'poreans to Invest in His Country, NEW STRAITS TIMES, May 31, 1996, at 60.

477. Privatization began with a modest target—to reduce the state sector to 30-40% of gross domestic product—and took off slowly. See GLEASON, supra note 461, at 91. In the last few years, however, the government has privatized most of its industrial giants, including the country's largest oil and gold facilities, mostly through sales to foreign interests. See Charles Clover, Kazakhs Steeled to Take Hard Line with Partners, FIN. TIMES, July 2, 1998, at 8; Charles Clover, Privatisation, June 17, 1998, at 2; Yuri Kushko, Kazakh Unions Say Privatisation Creates Ghosttowns, REUTERS EUR. BUS. REP., Apr. 2, 1997, available in LEXIS, News Library, REUEUB File; Sander Thoenes, Gold Mining, July 23, 1997, at 5.


479. Kazakhstan's Mineral Wealth Makes a Good Base for Middle Class Growth, supra note 475.


482. See, e.g., CHINN & KAISER, supra note 127, at 194-96.

483. Gail W. Lapidus, From Democratization to Disintegration: The Impact of Perestroika on the National Question, in FROM UNION TO COMMONWEALTH, supra note 121, at 49.

484. See, e.g., CHINN & KAISER, supra note 127, at 190, 194, 198-201; TISHKOV, supra note 126, at 128. The required teaching of the "Kazakh version" of history has been a particular source of ethnic friction. See Melvin, supra note 481, at 209.
and symbols.485 Such “Kazakhization” policies (fueled perhaps by “the alarmist rhetoric of the media in the Russian Federation”)486 led to the departure of an estimated half million Russians in 1994.487

Nevertheless, in the last few years, even as marketization has intensified, Kazakh-Russian relations in Kazakhstan seem to have stabilized. In contrast to some of its neighbors,488 no significant episodes of interethnic violence have occurred in post-independence Kazakhstan.489 Moreover, in the last several years, Russian emigration from Kazakhstan has slowed dramatically,490 with significant numbers of Russians actually returning to Kazakhstan.491 All of this has made Kazakhstan something of an intriguing “success story” for academics and businesspeople alike. The only major glitch occurred in 1994, when President Nursultan Nazarbayev, who has ruled the country since independence, dissolved Parliament and took a sharp turn toward authoritarianism.492

485. See Neil Melvin, Russians Beyond Russia: The Politics of National Identity 109 (1995). In September 1992, for example, the Parliament passed legislation returning many cities to their traditional names: Tselinograd City became Akmola, Gurev became Atyrau, Kirovo became Zhanalyk, and so on. See Gleason, supra note 461, at 88.

486. Tishkov, supra note 126, at 128.

487. See Thoenes, Tough at Home, Tactful away, supra note 476, at 3 (quoting official statistics). But see Melvin, supra note 485, at 118 (stating that 200,000 Russians left in 1994); Tishkov, supra note 126, at 123 (stating that 400,000 left). According to some estimates, more than one million Russians left Kazakhstan between 1991 and 1995. See Vladimir Yegorov, The Russian Language as a Target of Persecution, CURRENT DIG. POST-SOVIET PRESS, Nov. 22, 1995, at 22.

Because of the size of the Russian population in Kazakhstan, a major Russian exodus is unlikely. See Tishkov, supra note 126, at 124. This is especially true in the northern oblasts, the birthplace and homeland of a high proportion of Russians. Chinn & Kaiser, supra note 127, at 190-91. The situation is different in other Central Asian republics, where Russians make up a much smaller portion of the population. According to one survey, 44% and 35% of the Russians in Tajikistan and Uzbekistan, respectively, believed in 1991 that “a massive Russian exodus from the republic was very likely in the near future.” Kaiser, Ethnic Demography, supra note 122, at 254. Most Russians have in fact left civil-war-torn Tajikistan. See Tishkov, supra note 126, at 124.

488. Ethnic conflict in Tajikistan has climaxed “in a devastating civil war.” Tishkov, supra note 126, at 128. In Kyrgyzstan, the ethnic riots that broke out in the Osh region in 1990 were among “the most violent in the territory of the former USSR.” Id. at 136.

489. The last episode of interethnic violence in Kazakhstan dates back to December 1986, when Kazakh demonstrators in Almaty protested the replacement of Kunayev, a Kazakh who had held the position of Communist Party First Secretary in Kazakhstan for the previous 25 years, with Gemadili Kol'bin, a non-Kazakhstani Russian. The demonstrations turned into riots, which were violently suppressed by Soviet troops. The Almaty riots are often cited as the first manifestation of nationalism in Central Asia, although they “now seem minor in comparison to the events in other republics.” Chinn & Kaiser, supra note 127, at 195-96; see Gleason, supra note 461, at 103.

490. See Thoenes, Tough at Home, Tactful away, supra note 476, at 3.

491. See Melvin, supra note 481, at 209. Many Russians returned to Kazakhstan “not simply because they were not welcomed back in Russia—which has certainly often been the case—but also because they found themselves living among Russians who were very different from themselves.” Id.

2. Satisfaction of Model Conditions

Kazakhstan has a low per capita income, a low rate of labor productivity, a high rate of fertility, and a high proportion of the population engaged in agriculture.\textsuperscript{493} Thus, model condition one (economic underdevelopment) appears for now to be satisfied, although education and health levels are higher in Kazakhstan than in most Third World countries.\textsuperscript{494} Condition two is also satisfied. As even the brief historical sketch above makes clear, longstanding ethnic divisions exist between Kazakhs and Russians.\textsuperscript{495} Whether condition three (the presence of a market-dominant minority) is satisfied is more questionable. Russians in Kazakhstan were clearly economically privileged at least until independence, dominating key industrial and technical positions and occupying the country's best housing.\textsuperscript{496} Whether Russians are market-dominant, however, is a distinct and pivotal question, which will be discussed in detail below. Finally, condition four is not squarely met either. While Kazakhs are a relatively impoverished group with claims to being the true indigenous owners of Kazakhstan,\textsuperscript{497} they are not a majority in Kazakhstan. Kazakhs today constitute roughly forty-two percent of Kazakhstan's population, Russians constitute thirty-eight percent, and a

\textsuperscript{493} See Mandelbaum, supra note 452, at 2. Per capita income estimates vary significantly. Kazakhstan's State Statistics Committee estimated per capita income as of June 1996 at roughly $35 a month. (The subsistence level set by the United Nations is $28 a month.) According to other surveys, Kazakhstan's per capita income may be as high as $95 a month, but even this estimate remains at developing country levels. See Kazakhstan's Mineral Wealth Makes a Good Base for Middle Class Growth, supra note 475.

\textsuperscript{494} See Shafiqul Islam, Capitalism on the Silk Route?, in CENTRAL ASIA AND THE WORLD, supra note 452, at 147, 153, 157.

\textsuperscript{495} Notwithstanding extensive interethnic contacts and linguistic Russification during the Soviet era, throughout Central Asia "the Russians and the titular population kept a cultural distance from one another. In effect, they were separate communities... Mixed marriages between Russians and people of the local nationalities were and remain rare." TISHKOV, supra note 126, at 126. Rates of interethnic marriage, however, have "increased with rising urbanization and education rates." CHINN & KAISER, supra note 127, at 84.

\textsuperscript{496} See Graham E. Fuller, Russia and Central Asia: Federation or Fault Line?, in CENTRAL ASIA AND THE WORLD, supra note 452, at 94, 109-10; Kaiser, Nationalizing the Work Force, supra note 123, at 103 tbl.9 (showing underrepresentation of Kazakhs in industry, transport and communications, construction, trade, services, and science). Russians are concentrated in the most industrially developed parts of Kazakhstan, namely the capital city (Almaty) and the northeastern oblasts. See TISHKOV, supra note 126, at 121; Fuller, supra, at 110.

\textsuperscript{497} Slogans such as "Drive the Russians out of Kazakhstan" and "Kazakhstan for Kazakhs" have been around since early this century. OLCOTT, supra note 120, at 206. Such sentiments, however, appear to be relatively rare today. See infra note 513 and accompanying text. The suffix "stan" in Kazakhstan is a Persian word meaning "land of." See Richard Boudreaux, Central Asia: The Long Road to Democracy, L.A. TIMES, Dec. 25, 1996, at A1. At the same time, many Russians in Kazakhstan are descended from families who arrived in the region before the Revolution and who think of Kazakhstan, "where they—and perhaps their parents and even grandparents—were born, and many of their relatives are buried, as their 'little homeland.'" TISHKOV, supra note 126, at 126.
variety of much smaller groups form the balance. This distinctive ethnic demography has important policy implications, as we shall see below.

3. Analysis

The model provides a useful framework for understanding Kazakhstan's achievement of combining significant marketizing success with ethnic stability. This relative ethnic amicability may rest in part on factors specific to Kazakh history and culture, such as the absence of a strong current of Islamic fundamentalism and Russification of urban Kazakhs. Without denying the salience of such factors, the model suggests three other possible explanations of the current situation in Kazakhstan.

a. Retreat from Democracy

First, Kazakhstan has already suffered a major retreat from democracy. To be sure, in form, Kazakhstan has a tripartite government with independent executive, legislative, and judicial branches. Additionally, opposition groups—including nationalist, socialist, and communist parties—exist and operate in public. Nonetheless, the substance of the Kazakhstan government for now is Nazarbayev, who was elected president in an uncontested election, who presides over a largely impotent Parliament, and who can make laws through unilateral decrees. It is therefore arguable that Kazakhstan already occupies a variant of model outcome three: A retreat from democracy may have helped Kazakhstan maintain both the market and its Russian minority.

498. See Kazakhstan: 1996, QUEST ECON. DATABASE: BUS. INTELLIGENCE REP. WORLD OF INFORMATION, Oct. 1996, at 1 [hereinafter 1996 Kazakhstan Country Profile]. The demographics of Kazakhstan have shifted dramatically over this century. In 1926, Kazakhs constituted approximately 57% of the total population; by 1959, this figure had dropped to just 30%. See Harris, supra note 124, at 5 tbl.1. According to the 1989 Soviet census, Kazakhs and Russians represented 39.7% and 37.8%, respectively, of Kazakhstan's total population. See CHINN & KAISER, supra note 127, at 189. After independence, many Russians left, resulting in the rough proportions of Kazakhs and Russians noted in the text.

499. See Olcott, supra note 119, at 218; Melvin, supra note 481, at 209. Nazarbayev has consistently "distanced himself from a religious identification. Alone among the Central Asian republics, Kazakhstan recognizes no Muslim holidays, and does not mention Islam in its constitution." Olcott, supra note 119, at 219.

500. See KONSTITUTSIJA [Constitution] art. 3, § 4 (Kaz.).

501. See GLEASON, supra note 461, at 86, 88-89.

502. See Elliot, supra note 453, at 1246-47.

503. The country's legislature, twice dissolved by Nazarbayev, now functions as little more than an advisory body. See GLEASON, supra note 461, at 86-87.

504. Under the so-called Nazarbayev Constitution, passed in 1995 with a 90% majority, presidential decrees essentially have the force of law. See id. at 87.
On this view, the argument would be that Nazarbayev has used his autocratic power to check majoritarian anti-Russian sentiment. There is some evidence of this. A career Communist Party member initially put into power by Moscow, Nazarbayev has always been relatively solicitous of his country’s large Russian constituency. In recent years, Nazarbayev has repeatedly urged interethnic accord, both because of the importance of Russian skills “to the economy and because of the necessity to maintain good relations with Russia itself.” Russian language newspapers, including the flagship Kazakstanskaya Pravda, operate freely, often voicing dissent. More crucially, under Nazarbayev’s direction, Russian was made an official language alongside Kazakh in 1997. In addition, Russian language schools in Kazakhstan are now encouraged to stay open. Finally, while significant “Kazakhization” of the country’s political apparatus has clearly taken place—Kazakhs now dominate the leading central ministries, the judiciary, and most spheres of public administration—Nazarbayev has also been careful to permit Russian Kazakhs to occupy key, visible official positions. Indeed, many Russians

505. See Elliot, supra note 453, at 1245-47; Olcott, supra note 119, at 209, 225. But see Yegorov, supra note 487 (suggesting that Nazarbayev has deliberately aroused anti-Russian sentiments). Described by one commentator as “an Asian who thinks like a European,” Nazarbayev was the only ethnic minority to be seriously considered as successor to Mikhail Gorbachev. GLEASON, supra note 461, at 83. Early popularity polls showed that “ethnic Russians approved of Nazarbayev’s politics even more than did ethnic Kazaks.” 6


507. See GLEASON, supra note 461, at 89-90, 132; Sander Thoenes, Kazakh Dissent Stilled by Silence, FIN. TIMES, Sept. 10, 1996, at 6. Shortly after independence, Nazarbayev (who according to Neil Melvin was “conducting extensive opinion-polling among Europeans”) sought to integrate influential Russians into “a pan-ethnic political organization, the Union of People’s Unity of Kazakhstan.” Melvin, supra note 481, at 209.

508. The study of Kazakh, however, is still mandatory. See CHINN & KAISER, supra note 127, at 194.

509. See KULCHIK ET AL., supra note 125, at 36-37; MELVIN, supra note 485, at 109-10. According to Chinn and Kaiser, the March 1994 parliamentary elections provide a stark example of political Kazakhization:

Of the 177 parliamentary seats, 42 were filled by the president rather than by election. Over 700 candidates competed for the remaining 135 seats, giving the appearance of a democratic election. However, Kazakh electoral commissions struck 200 potential candidates from local ballots. These candidates tended to represent Russian nationalist positions. In addition, Cossack organizations were not allowed to field candidates. As a result of such preelection maneuvering, only 128 Russian candidates appeared on the ballots, compared to 566 Kazakhs, even though voting-age Russians outnumbered Kazakhs.

CHINN & KAISER, supra note 127, at 200 (footnote omitted). At the same time, from the perspective of Kazakhs in the west, north, and east (the Small and Middle Hordes), “Kazakhization” is in fact often “a cover for the advancement of the interests of the Great Horde or southerners. Many of the Kazakhs appointed to high and middle-level [political] positions are from the south.” MELVIN, supra note 485, at 110; see infra text accompanying notes 526-527 & 535-537.

510. See MELVIN, supra note 485, at 116, 120.
purportedly view Nazarbayev "as the only man who can slow down the development of Kazakh domination of the country." 511

While the model provides no grounds for assuming that an authoritarian leader would choose to pursue ethnic accommodationism (rather than, say, eliminationism), the model does predict that leaders who seek both to marketize and to accommodate an economically dominant minority in the face of a resentful, impoverished majority will find it easier to do so under nondemocratic conditions. The problem, however, is that the Kazakhs are not in fact a resentful, impoverished majority. In fact, taken together, the Russian, Ukranian, and German Kazakhs—traditional political allies, often misleadingly referred to as the "Russian-speaking" population—are very nearly equivalent in number (approximately forty-seven percent of the population) to the Kazakhs. 512

Moreover, there is a danger of mistaking cause for effect in attributing Kazakhstan’s current ethnic stability to Nazarbayev, however shrewd or powerful he may be. Many autocrats have unsuccessfully tried to “impose” ethnic harmony (indeed, one of the model’s corollaries is that leaders can much more easily foment than control ethnonationalist movements). If Nazarbayev were forcing ethnic accommodation upon a recalcitrant Kazakh populace, one would expect to see many more eruptions of suppressed anti-Russian resentment. But again, no significant outbreaks of anti-Russian violence have occurred in postindependence Kazakhstan. Recent surveys suggest that most Kazakhs wish to coexist peacefully with Russians and, to a significant extent, with Russian culture. 513

b. Russians and Market Dominance

A second possible explanation is that the Russian Kazakhs are not a market-dominant minority. If Russians are not market-dominant in Kazakhstan, then marketization would not be expected under the model to fuel ethnonationalist resentment and backlash among Kazakhs. This possibility, together with Nazarbayev’s accommodationist efforts, could account in substantial part for Kazakhstan’s success in combining marketization with relative ethnic stability.

511. Elliot, supra note 453, at 1247.


513. According to one sociological survey taken in Kazakhstan in December 1994, both Kazakhs and Russians “want to learn the language and culture of the other [group], and to live in a cooperative, peaceful way.” TISHKOV, supra note 126, at 127. The great majority (80.6%) of surveyed Kazakhs endorsed the compulsory study of Russian in school. See id. Somewhat at odds with the survey, however, Chinn and Kaiser observe that “Russians have for the most part resisted learning Kazakh” on the grounds that “the utility of Kazakh is limited outside Kazakhstan” or even in the Russian-dominated northern oblasts. CHINN & KAISER, supra note 127, at 194.
Throughout the imperial period, Russians in Kazakhstan were obviously economically dominant—and possibly even market-dominant, to the extent it can be said that market conditions existed in tsarist-era Kazakhstan. Russians remained an economically hegemonic group during the Soviet era. Kazakhs are still disproportionately rural and lag behind their Russian counterparts in education, technical skills, and per capita income. For this reason, some believe that Russians would outperform Kazakhs under free-market conditions. However, the extent to which Kazakhstan’s current ethnoeconomic disparities simply reflect discriminatory Soviet-era biases, which the market should now correct, is an open and pivotal question.

Kazakhs today are no longer nomadic, their literacy and secondary education levels are impressively high (comparable to those in the East Asian Tigers), and there is no compelling evidence to suggest that they are “intrinsically” or culturally less “entrepreneurial” than their Russian counterparts. Indeed, some evidence suggests that market policies are not reinforcing the historical economic dominance of Russians over Kazakhs in Kazakhstan but rather undercutting that dominance. For example, many Russian Kazakhs occupied positions in the state-supported, “outdated factories that are among the hardest hit by [market] reforms.” Similarly, the recent shift away from the heavy industrial and military sectors to “commercial, brokering, and financial activity” appears to have favored Kazakhs systematically over Russians.

Nevertheless, it is much too early to know whether marketization in Kazakhstan will favor Kazakhs or Russians (or neither). Many of the economic problems experienced by the Russian Kazakhs in the northern

514. In the late-19th and early-20th centuries, the sudden opening up of commerce and trade in the steppe benefited Russian farmers and livestock breeders almost exclusively. The vast majority of Kazakhs, whose farming remained extremely primitive, could not—or would not—take advantage of the rapidly growing markets in the north. See OLCOTT, supra note 120, at 85, 98.

515. See Kaiser, Nationalizing the Work Force, supra note 123, at 96. Starting in the 1970s, however, most of the Soviet republics embarked on “indigenization” movements. As a result, even in the late Soviet era, Kazakhs came to dominate white collar management positions as well as high-status professions such as teaching, literature, arts, and science. See id. at 91, 97-99, 100 tbl.6.

516. See KULCHIK ET AL., supra note 125, at 38. Russians are still overrepresented in Kazakhstan’s industrial, transportation, communications, engineering, construction, science, textiles, and electronics sectors. See Kaiser, Nationalizing the Work Force, supra note 123, at 94-95; Olcott, supra note 119, at 213.

517. See KULCHIK ET AL., supra note 125, at 21.

518. See OLCOTT, supra note 120, at 253.


520. In fact, some have argued that Russians—both in and outside of Russia—are culturally not entrepreneurial. See, e.g., ALFRED J. RIEBER, MERCHANTS AND ENTREPRENEURS IN IMPERIAL RUSSIA 21-24, 29-30 (1982).

521. See Thoenes, Tough at Home, Tacitful away, supra note 476, at 3.

522. TISHKOV, supra note 126, at 122.
oblstas may reflect temporary economic dislocations resulting from the collapse of the former Soviet Union. Moreover, as the next Section elaborates, some recent Kazakh economic advances may not reflect market forces at all but rather an ethnocratic bias in the country’s recent marketization initiatives.

c. Anti-Russian, Antimarket Backlash?

The possibility of a systematically pro-Kazakh bias in Nazarbayev’s marketization program suggests a third explanation of why marketization in Kazakhstan has not led to anti-Russian animus. According to this view, “[c]ontrary to all declarations about the republic’s advance towards a free-market economy,” the Nazarbayev government is in fact circumventing market forces in order to protect “the interests of the ethnocratic state and nascent national Kazakh elite.” Specifically, critics argue that the government deliberately rigged Zhekeshelendiru—the voucher privatization program through which many of the country’s state-owned enterprises were transformed into corporations with shares and shareholders—to favor Kazaks in general and the elite clan of the Great Horde (from which Nazarbayev hails) in particular. Similarly, privatization of land, which almost certainly would have “favor[ed] the Slavs and Uzbeks both, because they are able to do small-plot farming, unlike Kazaks,” allegedly was conducted in a way that left title of all agricultural land in state hands, leading some to label the process “ethnoprivatization.” In addition, the government has been accused of “blocking contacts between foreign

523. See Kaiser, Nationalizing the Work Force, supra note 123, at 105. Russians in Kazakhstan tended to be concentrated in the “all-union” industries in northern Kazakhstan that formerly produced goods for the whole of the Soviet Union. Following independence, the Russian Federation quickly closed its southern border, thereby denying these enterprises access to their main markets. At the same time, the Russian [government] slashed purchases of military equipment from Kazakhstan. . . . The combined effect of these policies was to create severe economic difficulties among the very populations Russia is so keen to “defend.” Melvin, supra note 481, at 209.

524. KULCHIK ET AL., supra note 125, at 24.

525. Id. at 26.

526. See GLEASON, supra note 461, at 92-94.

527. See Melvin, supra note 481, at 209-10. Kazakhstan’s privatization program drew upon the so-called Czech model, under which Privatization Investment Coupons (PICs), or vouchers, were initially distributed to the general population. The PICs were not freely tradable and could only be invested in government Investment Privatization Funds. These Funds in turn acquired shares in newly formed joint stock companies. See GLEASON, supra note 461, at 93. According to critics, the government has blatantly favored funds representing certain Kazakh clans from southern Kazakhstan. See KULCHIK ET AL., supra note 125, at 24.

528. Olcott, supra note 119, at 225; cf. Belcuore, supra note 79, at 466 (noting that private ownership of land long was anathema to the nomadic Kazakhs).

529. KULCHIK ET AL., supra note 125, at 23.
investors and non-Kazakh market operators, which, they fear, might stimulate the development of a Russian-speaking bourgeoisie.” These claims, if true, would support a theory that Kazakhstan currently falls into model outcome one.

4. Directions

For purposes of the model, the two most salient facts about Kazakhstan are the country’s unusual demographic balance and the substantial possibility that the Russian minority, although historically economically dominant, will not prove to be market-dominant. Given Kazakhstan’s particular demographics, it cannot be assumed that democracy would lead to an ethnocratic state or even to the election of predominantly ethnic Kazakh leaders. As a result, while the model suggests that democratization likely will lead to some explicit ethnopoliticking in Kazakhstan (as is often the case in divided societies), the model does not predict that democracy in Kazakhstan will necessarily present a serious obstacle to marketization. Even assuming that the Russian Kazakhs are market-dominant, democratization is unlikely to produce irresistible majoritarian, antimarket pressures—again for the simple reason that Kazakhs are not a majority in Kazakhstan. And, as already discussed, it is not clear that the Russians are in fact market-dominant.

Accordingly, the model suggests that Kazakhstan, to a greater degree than most developing countries, may be a receptive candidate for the stable, simultaneous, ethnically neutral pursuit of markets and democracy. Nazarbayev’s current autocracy—which, despite his assertion that “democracy is knocking on the door,” shows no sign of abating—is causing increasing concern, domestically and internationally. Moreover, Nazarbayev’s blatant pursuit of not just ethnomarketization (favoring Kazakhs over the Russian-speaking population), but also clannism and nepotism, is drawing intensifying criticism from Kazakhs and non-Kazakhs alike. As one observer has remarked: “[Nazarbayev’s] rule has been accompanied by clan appointments and favoritism that have pitted Kazakh

530. Id. at 26. “Those foreign investors who established direct contact with the [Kazakh] ruling circles, such as Chevron and Samsung, have achieved the most spectacular results.” Id. at 25.

531. More precisely, on this theory, Russians are market-dominant, and the absence of a significant anti-Russian backlash against Nazarbayev’s marketization policies would be owing to the fact that these policies already incorporate an effective anti-Russian component.

532. See sources cited supra note 211.


534. See id.; Thoenes, supra note 507, at 6.

535. See Melvin, supra note 481, at 210.
against Kazakh. Thus, while for many in the European community the policy of ‘Kazakhization’ represents an ethnic threat, in the Kazakh community it is seen as the growing dominance of the Great Horde.”

Similarly, in a local critic’s view, “[n]ot talent but connections determine everything. It’s the ability to give the right bribes, not the ability to run a company. There are no equal opportunities here. If I were married to the daughter of Nazarbayev I would be one of the country’s wealthiest businessmen.”

Some, perhaps even most, of Nazarbayev’s pro-Kazakh market interventions to date may be justifiable on grounds of corrective justice. Moreover, these interventions, together with other Kazakhization policies, may have played an important role in defusing anti-Russian animus during the emotionally charged transition period following independence. In light of the available evidence, however, persistence by the Nazarbayev government in systematically favoring Kazachs, particularly those who are well positioned either by family or clan, may simply constitute illegitimate ethnocracy, if not outright corruption. On balance, in the absence of compelling evidence that Russians are market-dominant, a strong argument can be made that marketization in Kazakhstan should be given a chance to proceed in an ethnically neutral manner. Should Russian market dominance begin to emerge after a period of time, it might then be appropriate to consider which, if any, measures should be adopted to address that contingency.

There is an additional reason for Nazarbayev to avoid favoring ethnic Kazaks. Russians in Kazakhstan are geographically concentrated in the northern part of the republic, near the border of Russia. Russians actually constitute a majority of the population in three of Kazakhstan’s northern oblasts and a plurality in four others. Empirical evidence suggests that when ethnic groups are geographically segregated, there is a much greater likelihood of secessionist initiatives and the violence that often accompanies them. Indeed, most political analysts agree that special dangers attend Kazakhstan’s northern oblasts, “where Russians have lived for generations, remain in the majority, and have developed a strong sense of homeland.”

536. Id.
537. Thoenes, supra note 507, at 6 (quoting Pyotr Svoik, a former minister turned opposition leader in Kazakhstan).
538. See, e.g., Boudreaux, supra note 497, at A1 (quoting Neil J. Melvin); Busvine, supra note 533.
539. See CHINN & KAISER, supra note 127, at 185.
540. See id.
541. See Fearon & Laitin, supra note 165, at 3, 12-13, 33.
542. CHINN & KAISER, supra note 127, at 190. On the other hand, it may be propitious for Kazakhstan that within the northern oblasts Russians and Kazaks generally live interspersed and
In an attempt to forestall secessionism, and in what most Russians resent as a deliberate effort to “Kazakhize” the population in the north, the Nazarbayev government has encouraged Kazakhs returning from other former Soviet republics and from foreign states to settle in northern Kazakhstan. These efforts at “demographic indigenization” have generally been successful: Notwithstanding significant Russian migration from the Kazakh-dominated southern oblasts to the northern oblasts, Kazakh population growth in the north has outpaced that of the Russians.

Nevertheless, the transition period over the next several years could be “potentially explosive.” As more and more Kazakhs move to the north, the Russians in the region “will be tempted to opt for secession while they still hold the majority rather than to wait for a time in which they will no longer be able to prevail in an independence referendum.” Hence, if Nazarbayev goes too far in “ethnocratizing” Kazakhstan’s economy and politics, he risks triggering an ethnonationalist backlash among the Russian populace, with potentially catastrophic consequences, including armed retaliation, intervention by Russia, or the forcible secession of the Russian-dominated northern oblasts, which many Russian nationalists view as “an integral part of Russia.”

Finally, if and when democratization proceeds in Kazakhstan, it will be essential to structure the electoral regime in a way that creates incentives for interethnic political alliances. Indeed, the prospects for “constitutional engineering” may be especially fruitful in a country with Kazakhstan’s ethnodemographic characteristics. Given the closely balanced numbers of Kazakhs and Russians in the country, ethnically conscious tailoring of the democratic process might prove particularly effective. For example, electoral systems that require majority support (as opposed to proportional representation) might be effective in discouraging the formation of divisive, ethnocentric political parties in Kazakhstan.

in fairly balanced numbers. According to one study, societies with high levels of ethnic dispersion and intermixing in cities are associated with lower levels of ethnic violence. See Fearon & Laitin, supra note 165, at 20-21.

543. Most of these Kazakhs have returned from Mongolia, where many Kazakhs fled in the 1930s to avoid Stalinist persecution. See Chinn & Kaiser, supra note 127, at 191 (citing Commission on Sec. & Cooperation in Eur. (CSCE), Human Rights and Democratization in the Newly Independent States of the Former Soviet Union 195-96 (1993)). Repatriation has been fostered by financial subsidies and a 1991 citizenship law that grants automatic citizenship (and permits dual citizenship, unlike for Russians) to Kazakhs from outside Kazakhstan. See id.

544. See id.

545. Id.

546. Id.


548. Horowitz, supra note 322, at 163. 

549. See generally id. at 163-203.
C. Vietnam

1. Background

Vietnam’s recorded history begins in 208 B.C., when a renegade Chinese general conquered Au Lac, a domain in the northern mountains of Vietnam populated by the Viet people, and declared himself emperor of Nam Viet. A century later, the powerful Han dynasty incorporated Nam Viet into the Chinese empire, and for the next thousand years, Vietnam was ruled as a province of China. During this period of Chinese colonization, and for many centuries afterwards, waves of Chinese immigrants—bureaucrats, scholars, and merchants, as well as soldiers, fugitives, and prisoners of war—settled in Vietnam. By the end of the seventeenth century, a distinct Chinese community (known in Vietnam as the Hoa) had formed within Vietnamese society:

Small Chinatowns sprouted in or close to almost every big city and major trading centre. . . . [T]he increasing numbers [of Chinese] allowed them to congregate according to dialect groups or kinship or even the causes which led to their leaving China. Their growing economic sophistication also meant the creation of institutions to regulate business activities . . .

Resentment of growing Chinese success and affluence in Vietnam, coupled with repeated attempts by China to conquer Vietnam, sparked recurrent anti-Hoa reprisals. Most notably, the bloody Tay Son uprising, which began in the 1760s and “took its roots from widespread peasant discontent,” specifically targeted the Chinese, “a distinctive urban elite.” Tay Son rebels took over the country in 1788. It was during the brief Tay Son reign that the Chinese were massacred in Cholon.

With the establishment of the Nguyen dynasty in 1802, Chinese business activities in Vietnam again flourished. The Nguyen emperors, who embraced Confucianism and modeled their imperial court after China’s court, had a symbiotic relationship with the country’s Chinese:

551. See GOLAY ET AL., supra note 95, at 392; KAMM, supra note 144, at 73; KARNOW, supra note 550, at 111.
552. See KHANH, supra note 104, at 14-16.
553. Id. at 16.
554. Id. at 18-19. The Chinese sided with the emperor against the Tay Son rebels. See AMER, supra note 296, at 9 n.20.
555. See KHANH, supra note 104, at 19.
556. See id. at 19-20.
The Nguyen rulers used Chinese merchants in the collection of taxes, encouraged them to set up shipyards to build boats and ships, allowed them to buy houses, acquire land, and form their own social and economic organizations. Historical records show that in some economic sectors, the Chinese were even more favoured than the Vietnamese. In the first half of the nineteenth century, the Nguyen court exempted new Chinese immigrants from all taxes [for three years]. Such preferential treatment for the Chinese community helped them to expand their economic power.

The increasing wealth of the Chinese community served the interests of the ruling officials, who received financial kickbacks from lucrative Chinese businesses. By the time the French arrived in the mid-eighteenth century, the Chinese were firmly embedded in Vietnam's economy, particularly in the commercial, trade, and mining sectors. Vietnam's gold industry, in particular, was monopolized by Chinese merchants.

Although the French only grudgingly tolerated the Chinese, controlling their immigration and prohibiting their involvement in the natural resources sector, the Chinese in Vietnam thrived under colonial free-market policies. Indeed, favorable economic conditions brought a rapid influx of Chinese immigrants (almost all of whom settled in the south), which continued until the middle of the twentieth century. By the 1930s, "the interstices between the large-scale manufacturing, plantation, commercial, and financial enterprises of the French were filled by the smaller enterprises of the Chinese." At the same time, the French policy of treating the Chinese as an outsider community "enhanced the distinctiveness of this minority and sustained latent Vietnamese hostility." The magnitude of the Chinese minority's economic power was astounding: Constituting just one percent of Vietnam's population, the Chinese controlled an estimated ninety percent of non-European private capital in the mid-1950s and dominated Vietnam's retail trade, its financial, manufacturing, and

557. Id.
558. See id. at 20.
559. See GOLAY ET AL., supra note 95, at 395; KHANH, supra note 104, at 20.
560. See KHANH, supra note 104, at 18.
561. See GOLAY ET AL., supra note 95, at 396; KHANH, supra note 104, at 57. The French took advantage of Chinese market expertise by entering into a number of cooperative commercial ventures, including joint rice exporting efforts to Hong Kong, Shanghai, and Singapore. See KHANH, supra note 104, at 57.
562. According to one estimate, 1.2 million Chinese arrived in Vietnam between 1923 and 1951. See KHANH, supra note 104, at 22.
563. GOLAY ET AL., supra note 95, at 396.
564. Id. This was true even though the French banned many expressions of Chinese culture in Vietnam—for example, by abolishing the Confucian examination system and the official use of Chinese characters—as part of an effort to break Vietnam's links with China and thus "to isolate Vietnam from its heritage and to neutralize the traditional elite." ANDERSON, supra note 150, at 126 n.23 (citations omitted).
transportation sectors, and all aspects of the country’s rice economy. Although there were also numerous wealthy Vietnamese in the commercial class, Chinese economic dominance produced (as it did throughout Southeast Asia) a bitter outcry against “the Chinese stranglehold on Indochina,” “the Chinese cyst,” and “the Chinese excrecence,” and triggered recurrent state retaliation, whether in the form of coercive assimilation policies or anti-Chinese commercial restrictions.

The French granted Vietnam independence in 1954. With the division of the country into two halves, the south became the Republic of Vietnam (ROV), and the north became the Democratic Republic of Vietnam. Roughly eighty-five percent of Vietnam’s Chinese population lived in the ROV and despite an early, abortive “Vietnamization” drive, Chinese economic dominance prevailed during the twenty years of the Saigon regime—that is, from 1955 to 1975. Particularly during the Vietnam War (which the Vietnamese call the American War), the wealth of the “compradore bourgeoisie” in the ROV rapidly intensified:

566. Purcell, supra note 266, at 190 (citation omitted).
567. As early as the 15th century, the Vietnamese government required Chinese residents to “conform with Vietnamese customs and traditions, even to the extent of dressing the Vietnamese way.” Khang, supra note 104, at 17. Interestingly, when China’s Han dynasty ruled Vietnam centuries earlier, the Chinese similarly—and unsuccessfully—tried to assimilate the Vietnamese, for example, by “establish[ing] schools to spread the Chinese language, which became the idiom of learned Vietnamese . . . .” Karnow, supra note 550, at 111.
568. Between 1955 and 1957, the Republic of Vietnam’s (ROV) “Vietnamization” drive effectively forced the Chinese in Vietnam to choose between their Chinese identity and their means of livelihood: Under a series of presidential decrees, members of Vietnam’s Chinese community who did not take on Vietnamese citizenship were prohibited from operating rice mills, acting as commercial middlemen, transporting goods and passengers, and engaging in areas of trade traditionally dominated by the Chinese. See Amer, supra note 296, at 19-20; Khang, supra note 104, at 53. Another law required the Vietnamese language be used in all Chinese high schools and mandated that all principals appointed to Chinese schools be Vietnamese. Amer, supra note 296, at 20. The ROV’s attempts to curtail the economic power of the Hoa failed. By closing down business operations “and by withdrawing large amounts of money from the banks, the Chinese virtually brought the [ROV’s] economy to a standstill by the summer of 1957.” Id. at 21 (citation omitted). Shortly afterwards, ROV authorities effectively retracted the anti-Chinese decrees. See id. at 21-22.
569. The United States replaced France as the primary supporter of anti-Communist South Vietnam, ruled by Ngo Dinh Diem. See Kamm, supra note 144, at xiv; Khang, supra note 104, at 22-23.
570. See Khang, supra note 104, at 23. In northern Vietnam, the Chinese made up a very small portion of the population and, in stark contrast to the Chinese in the south, were predominantly rural—“mainly fishermen, foresters and craftsmen.” Amer, supra note 296, at 12, 18.
571. See supra note 568.
572. See Amer, supra note 296, at 23.
573. “Compradore” bourgeoisie, from the Portuguese word for “buyer,” was the official Communist term for local agents who had made money by acting on behalf of foreign capitalists. See Khang, supra note 104, at 79. In the Vietnamese context, the southern compradore bourgeoisie included both Vietnamese and Chinese businessmen, who were decried as “reactionary in politics” and “[in collusion] with imperialism and the Saigon regime.” Id.
This was a time when opportunities for business came with the U.S. need for a trade and service network to supply its troops fighting in Vietnam. The post-1964 years also saw an ROV government inclined to deregulate the economy and promote liberal market practices. Local Chinese businessmen were quick to seize these opportunities and expanded operations not just in their traditional strongholds of trade and services, but also in finance and light industries. The political underside of such economic practice was the inevitable corruption of the power elite. In order to operate... [the disadvantaged local Chinese] had to cultivate the politicians and military leaders of the ROV. At the simplest level it was wining and dining them. But a more serious form involved the use of huge monetary bribes or offers of shares in businesses.  

Following the country’s reunification in 1976, the revolutionary Vietnamese government singled out the entrepreneurial Chinese of the south as “bourgeois” and “an important part of world capitalism,” arresting and brutalizing thousands and confiscating their property, along with that of their Vietnamese counterparts. In March 1978, all private trade was banned in Vietnam. A few months later, the government introduced a new currency and rendered existing money holdings worthless, thus completing its campaign to transform Vietnam into a socialist society. Vietnamese authorities claim that this “campaign was not directed against any particular ethnic group.” Nonetheless, a disproportionate number of Vietnamese Chinese were affected. Many former businessmen and traders were left “without any means of sustaining themselves.” Others faced forcible relocation to “new economic zones.” As a result, many thousands of Chinese from the former ROV fled the country.

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574. Id. at 80. During the Saigon regime, “[s]ome of the Chinese capitalists came to be called Kings due to their dominant position in trade in different products. . . . [Hence] the Rice King and the Petroleum King, only to mention a few.” AMER, supra note 296, at 23 (footnote omitted).
576. See KHANH, supra note 104, at 81 (footnote omitted).
577. See AMER, supra note 296, at 35-36, 53-54; KHANH, supra note 104, at 81; see also James N. Wallace, A Ray of Hope, U.S. NEWS & WORLD REP., Aug. 6, 1979, at 50 (“Employing the techniques Hitler used to inflame hatred against the Jews, Hanoi is blaming day-to-day problems in Vietnam on resented Chinese control of commerce and the Mekong Delta rice trade.”).
578. See AMER, supra note 296, at 55.
579. Id.
580. Id. at 56.
581. Id.
582. See id. After April 1978, the number of people leaving southern Vietnam by boat to other Southeast Asian countries rose to 5000 a month. See id. Around the same time, more than 160,000 Chinese left the former North Vietnam for China. See id. at 46-47; supra note 296.
In 1986, after years of economic disaster and famine, and in the face of triple-digit inflation, unmanageable debt, and declining aid from Soviet-bloc countries, the Vietnamese government launched a program of economic liberalization, known as doi moi ("renovation"), designed to move Vietnam away from centralized planning toward a market-based economy. The implementation of doi moi has been described as follows:

Since 1988, Vietnam has given free priority to maintaining macro-stability while concentrating its limited administrative resources on strengthening the institutional base of its emerging market economy in order to promote micro-stability. There has been no rush to privatize SOEs [state-owned enterprises]... as in Eastern Europe. Instead, the promotion of micro-efficiency has focused on price liberalisation, on creating space for the growth of the private sector and, finally, on imposing market discipline on SOEs both by removing the soft budget constraint and by exposure to international competition.

The effects of doi moi, in particular the inflow of foreign investment, have been more pronounced in southern Vietnam than in northern Vietnam. As of 1995, the Mekong Delta and Ho Chi Minh City had almost 30,000 private-owned enterprises, in contrast to roughly 3400 in Hanoi and Haiphong. Following familiar development patterns, doi moi has also
benefited urban areas far more than rural areas, which by most accounts have experienced minimal improvement from marketization.\footnote{587}{See, e.g., KAMM, supra note 144, at 264; Ari Kokko, Managing the Transition to Free Trade: Vietnamese Trade Policy for the 21st Century 4 (May 1997) (unpublished manuscript, on file with The Yale Law Journal).}

Economic liberalization in Vietnam has revived the entrepreneurial presence of the predominantly urban Chinese minority.\footnote{588}{Even after the Communist takeover of the country and the mass departures after 1978, "a certain part of the business networks of the ethnic Chinese [in southern Vietnam] remained intact.... Furthermore, the trade links between the ethnic Chinese [who remained] in Vietnam and Chinese in Southeast Asia, especially Singapore, seem to have been functioning." AMER, supra note 296, at 56.} Today, the Chinese in Vietnam cluster in Ho Chi Minh City (still Saigon to most Vietnamese\footnote{589}{See David Lamb, Saigon by Any Name Lives on, L.A. TIMES, Sept. 23, 1997, at A1.}), where they constitute about twelve percent of the population but control thirty to thirty-five percent of that city’s commercial activity.\footnote{590}{See Gale Eisenstodt, Caged Tiger, FORBES, Mar. 25, 1996, at 64.} For the moment, the Vietnamese government is openly encouraging the Chinese minority to play a substantial role in Vietnam’s economic development, for example by engaging in joint ventures with the government and by bringing in foreign investment from their overseas contacts.\footnote{591}{See Vietnam Seeks Ethnic Chinese Potential for Development, JAPAN ECON. NEWswire, Mar. 30, 1997, available in LEXIS, News Library, CURNWS File.}

2. Satisfaction of Model Conditions

With the overwhelming majority of its population rural, undernourished, and chronically poor, Vietnam is a typical economically underdeveloped\footnote{592}{See KAMM, supra note 144, at 44, 228-29, 254-55, 268; Kokko, supra note 587, at 3. Indeed, Vietnam “remains one of the world’s poorest nations.” KAMM, supra note 144, at 44.} country,\footnote{593}{See GERALD CANNON HICKEY, FREE IN THE FOREST: ETHNOHISTORY OF THE VIETNAMESE CENTRAL HIGHLANDS 1954-1976, at 6, 60 (1982). This is true notwithstanding repeated (and largely unsuccessful) efforts by Vietnam to assimilate these groups. See id.} easily satisfying model condition one. Condition two (severe ethnic divisions) is probably met as well. Even assuming that the longstanding animosities between the northern Vietnamese and the southern Vietnamese do not reflect an ethnic conflict, deep divisions have long existed between the Vietnamese majority and the country’s Cham, Chinese, Khmer, and highlander ethnic minorities.\footnote{594}{See WORLD ALMANAC AND BOOK OF FACTS, supra note 100, at 834.} Moreover, consistent with condition four, the Vietnamese represent an impoverished majority with claims to being Vietnam’s true indigenous “owners.”

Whether the Vietnamese Chinese—who today constitute roughly three percent of the country’s population\footnote{595}{See KAMM, supra note 144, at 264; Ari Kokko, Managing the Transition to Free Trade: Vietnamese Trade Policy for the 21st Century 4 (May 1997) (unpublished manuscript, on file with The Yale Law Journal).}—represent a market-dominant
minority in Vietnam (model condition three) is a crucial question, which will be discussed more fully below. For the moment, it will suffice to say that in urban Vietnam, where the Chinese are concentrated—and, significantly, where the vast part of Vietnam’s recent growth has taken place—the Chinese appear to be prospering disproportionately as a result of economic liberalization vis-à-vis the Vietnamese majority.

3. Analysis

Assuming for the moment that Vietnam satisfies all of the model conditions, one would not necessarily expect to see any of the model outcomes occurring in Vietnam because the government, while clearly marketizing under doi moi, has taken no steps toward democratization thus far. On the contrary, the recent ascension of General Le Kha Phieu to Vietnam’s highest political post is widely viewed as a victory for old-guard Communists “more interested in preserving political control than in liberating economic energies.” And while there is precedent in Vietnam’s history for all three of the model outcomes, there are currently no signs of significant anti-Chinese backlash. Nevertheless, the model raises a set of previously unaddressed issues, with important policy implications for Vietnam, both now and in the event that it someday chooses to democratize.

a. The Significance of the Vietnamese Chinese

Without exception, the recent and increasingly voluminous law and development literature on Vietnam devotes little or no attention to the role of the Chinese minority in Vietnam. The same is true of the economics


596. See supra text accompanying notes 590-591; infra text accompanying notes 610-613.

597. An Untimely Retreat by Vietnam, N.Y. TIMES, Jan. 12, 1998, at A20; see David Lamb, Vietnam: Willful Contrarian in Booming Asia? Rise of New Communist Leader Seen as Step back for Already Lagging Nation, WASH. POST, Jan. 6, 1998, at A14. General Le Kha Phieu, who was designated Communist Party Secretary General in January 1998, was one of several new top officials recently named to replace the aging leadership of Do Muoi. The others are Prime Minister Phan Van Khai, an economist generally associated with market reform, and President Tran Duc Luong, a mining engineer. See An Untimely Retreat by Vietnam, supra.

598. See supra text accompanying notes 554-555, 557-560 & 571.

599. The vast bulk of this literature has been practitioner-oriented and “almost entirely descriptive.” Sidel, supra note 57, at 713; see, e.g., ENGHLOM, supra note 584; ANNE C.M.J. SCHOT, LEGAL ASPECTS OF FOREIGN INVESTMENT IN THE SOCIALIST REPUBLIC OF VIETNAM (1996); VIETNAM: A LEGAL BRIEF (Frederick R. Burke & David Howell eds., 1992); F. Gayle Connor, Vietnam: Trading With the Enemy or Investing in the Future?, 25 LAW & POL’Y INT’L BUS. 481 (1994); Thao Cung & Frank Meier, Overview of Recent Tax Reforms in Vietnam, 11 TAX NOTES INT’L 1207 (1995); Glenn P. Jenkins & Seth E. Terkper, Vietnam’s Tax Reforms: Policies in Transition Economies, 6 TAX NOTES INT’L 469 (1993); Rory J. Radding & H.T. Than,
literature on Vietnam. This lack of attention is, at the very least, striking from an historical perspective. Even a cursory look at Vietnam’s past reveals the deep anti-Chinese roots of Vietnamese nationalism. Although Vietnam’s relation to China and the Hoa has always been complex, rejection of Chinese domination lies at the heart of Vietnam’s most famous national legends and landmarks. More to the point, the Chinese in Vietnam, as elsewhere in Southeast Asia, played a pivotal role in Vietnam’s economy for much of the country’s recorded history.

Nonetheless, the situation in Vietnam today is arguably different. As noted above, after 1975 the revolutionary Vietnamese government began confiscating Chinese wealth and subjecting the Chinese (along with their wealthy Vietnamese counterparts) to persecutions and purges. Although these actions were undertaken as part of a broader socialist upheaval in

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601. The anti-Chinese heritage of Vietnamese nationalism is often overlooked by Westerners, who perhaps tend to focus on the more recent events of the Vietnam War. See David K. Shipler, ROBERT McNAMARA AND THE GHOSTS OF VIETNAM, N.Y. TIMES, Aug. 10, 1997, § 6 (Magazine), at 30. It is worth recalling that Vietnam was colonized by the Chinese for roughly a thousand years and by the French for roughly a hundred.

602. Thus, every Vietnamese knows that in 40 A.D., the Trung sisters led a brilliant, sweeping insurrection against China. Although the Han army eventually crushed the rebellion and captured the sisters, Vietnamese legend has it that the heroic pair chose death at their own hands. To this day, the sisters who defied China remain the most honored national heroes or heroines. Even during the war between north and south, when the two Vietnamese agreed on nothing, both Hanoi and Saigon, and all other towns on either side, named a principal street Hai Ba Trung, "two Trung sisters."


which the Chinese were by no means the only victims, the result was a significant decline in the Vietnamese Chinese population. Between the early 1970s and the commencement of doi moi, the Chinese population in Vietnam fell by as much as half, and today there are virtually no Chinese in Vietnam’s rural areas, where eighty percent of the population lives. A preliminary question, then, is whether the Chinese in Vietnam today represent a sufficient presence and are capable of exerting sufficient control over the country’s economy to trigger the kind of ethnonationalist dynamics predicted by the model.

A negative answer cannot be inferred from the fact that the Chinese constitute only three percent of Vietnam’s population. First, in countries like Indonesia and the Philippines (where the Chinese make up two to three percent of the population), their small numbers have not prevented the Chinese from being the repeated targets of resentment and state-directed retaliation. Second, although doi moi was initiated nearly a decade ago, the consensus is that Vietnam is still in the early stages of marketization; with the exception of the agricultural sector, almost no privatization has taken place in Vietnam, and the state continues to occupy a “leading position in the multi-sector economy.” If the Vietnamese government undertakes significant genuine market reforms, the economic role of the Vietnamese Chinese—who in the last decade have regained their prior prominence in Vietnam’s light industry (and, to a lesser extent, banking and import-export) sectors, and who today include “a new breed of young ethnic Chinese who have made it big”—will almost certainly increase. Already doi moi has brought an inflow of investments by Chinese from all over Southeast Asia “through their family connections in Cholon, Saigon’s revitalized Chinatown.” Moreover, increasing numbers of former Hoa—

605. See KHANH, supra note 104, at 23-25.
606. See Kokko, supra note 587, at 4.
607. See supra text accompanying notes 183-184, 265-266, 283, 301.
608. Collective agriculture was abolished in the late 1980s. The state share of agricultural production has fallen to less than three percent and is principally limited to “industrial crops such as coffee, tea and rubber.” Kokko, supra note 587, at 4.
609. All Things Being Equal for the State, S. CHINA MORNING POST, Sept. 17, 1997, at 6 (quoting Nguyen Tam Chien, Vietnam’s Deputy Foreign Minister); see also Kokko, supra note 587, at 7.
610. See KHANH, supra note 104, at 107. The Vietnamese Chinese have been particularly successful in "plastics, textiles and garments, shoes, and foodstuff-processing." Id.
612. KAMM, supra note 144, at 61; see also KHANH, supra note 104, at 98. In 1994, ethnic Chinese from Hong Kong, Taiwan, and Singapore, who reportedly had “maintained key economic links with the Chinese community in Vietnam,” accounted for roughly 40% of total foreign investment in Vietnam. See Mehta, supra note 611, at 17.
many of whom have prospered in their new countries—are returning to Vietnam “to explore business opportunities.”

If the history of Southeast Asia is any guide, and if the great majority of Vietnamese continue in the near to midterm future to live in chronic poverty (as will very likely be the case even under the best of scenarios), then there is reason to worry that rising Chinese economic dominance will provide grist for anti-Chinese demagoguery and resurgent Vietnamese ethnonationalism. Recent journalistic accounts suggest that the revival of Chinese economic control throughout urban Vietnam has already produced “a simmering resentment among the Vietnamese,” although the extent of such resentment is difficult to ascertain. Nevertheless, as the next few Sections will demonstrate, grounds for optimism may also exist.

b. Political Favoritism, Corruption, and the Question of Market Dominance

The economic dominance of the Chinese in Southeast Asia has not always stemmed purely from their market prowess. In Vietnam, as elsewhere in the region, Chinese economic success often has reflected superior political connections as much as superior entrepreneurialism. This was certainly true during the Nguyen dynasty, when the Hoa enjoyed preferential economic treatment from the state. More egregiously, Chinese economic power during the Saigon regime clearly reflected in part nonmarket factors. After Nguyen Van Thieu seized power in Saigon in 1966, “a small coterie of Chinese worked with him to play the leading role in exploiting South Vietnam corruptly.” After Saigon fell, Thieu fled Vietnam with millions of dollars in gold, while his Chinese cronies, “who had been exporting large amounts of capital well before 1975,” drew on “their personal connections in Southeast Asia... to go into exile and prosper elsewhere.”

Accordingly, while the Chinese in Vietnam often have been targets of state discrimination, an argument nevertheless can be made that their historical economic dominance to some extent reflects political favoritism. To be sure, such favoritism raises the further question of why those in

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613. KHANH, supra note 104, at 98.
614. Mehta, supra note 611, at 17; see also Eisenstodt, supra note 590, at 64.
615. See supra note 148 and accompanying text. Although ethnic generalizations are always potentially suspect, it is striking that the Vietnamese are themselves widely regarded as an entrepreneurial people, culturally “industrious and inventive.” KAMM, supra note 144, at 24.
616. See supra text accompanying notes 556-558.
617. KOLKO, supra note 603, at 22.
618. See KARNOW, supra note 550, at 456.
619. KOLKO, supra note 603, at 22.
620. See, e.g., AMER, supra note 296, at 10, 19-20 (describing various anti-Chinese economic restrictions).
power chose to favor (and to “deal” with) the Chinese. Part of the answer must be that the Chinese in Vietnam, as elsewhere in Southeast Asia, had already established themselves as a successful, wealth-generating “middleman” minority.\(^{621}\) Still, if part of the Hoa’s historical economic success owes not to market forces but to political favoritism, then genuine marketization (at least in theory) might eliminate this favoritism and ameliorate the historical ethnoeconomic imbalance.

c. The Possibility of Vietnamese Exceptionalism

Another possible ground for optimism lies in the fact that Vietnam is considerably more Sinicized than other Southeast Asian nations.\(^{622}\) For over two millennia, Vietnam’s history and culture have been closely intertwined with those of its colonizer-neighbor.\(^{623}\) The results are visible throughout Vietnamese society, from its embrace of Confucianism and Taoism to its literature, art, and architecture—much more so than in Indonesia, Malaysia, or the Philippines.\(^{624}\) Additionally, there has been considerable “blood admixture” between the Vietnamese and the Chinese.\(^{625}\) As a result, at least arguably, Vietnam may be less prone to anti-Chinese animus and politicking.

In other words, the hope would be that Vietnam will prove exceptional in Southeast Asia in its greater potential tolerance of Chinese economic success. Unfortunately, this hope flies somewhat in the face of historical fact.\(^{626}\) Moreover, even if relations between the Vietnamese and the Hoa are relatively benign for the moment, ethnic relations are highly malleable, and,

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621. See KHANH, supra note 104, at 57.
622. See AMER, supra note 296, at 7-8; KAMM, supra note 144, at 128.
623. See AMER, supra note 296, at 2, 7.
624. See id. at 7; KAMM, supra note 144, at 128-29; see also KEITH WELLER TAYLOR, THE BIRTH OF VIETNAM 80-81, 281 (1983) (noting the Chinese roots of Buddhism, Buddhist architecture, and Taoism in Vietnam). Prominent Vietnamese have described Vietnam as part of the “chopstick civilization,” referring to the four nations that are linked by much deeper cultural ties than their use of Chinese eating utensils—China itself, Japan, Korea, and Vietnam. The motherland of Chinese culture and its three offspring, with all their differences, form a cultural family quite distinct from the rest of Asia. Vietnam is its southernmost member.
625. PURCELL, supra note 266, at 201; see also id. at 179, 200-02 (detailing the “inextricably commingled” blood of the Chinese and the Annamites). Particularly in North Vietnam, the Chinese were assimilated early on and regarded as Vietnamese nationals. See AMER, supra note 296, at 8. More generally, after 1829, children of mixed marriages between the Chinese and the Vietnamese were considered Vietnamese. See id. at 8-9. In addition, during the Saigon regime, many foreign born Chinese eventually became Vietnamese nationals for economic reasons. See id. at 22, 24.
626. See, e.g., PURCELL, supra note 266, at 202-03 (detailing deep, historical anti-Chinese animus in Indochina).
as one observer of Vietnam’s relation to China put it in 1965, it would be an error to “attribute more than is justified to their common cultural heritage.”

4. Directions

Today’s legal commentary on Vietnam is almost unanimous in encouraging this potential “Asian Tiger” to privatize its debt-ridden state sector and to normalize its trade and investment regime as quickly as politically feasible. As usual, this largely practitioner-oriented literature has very little to say about distributional problems, much less ethnodistributional problems. By contrast, this Article has argued that, if markets and eventually democracy are the ultimate goals in Vietnam, then distributional issues must be addressed.

As a general matter, it will be important for Vietnam’s policymakers to try to find ways to spread the benefits of marketization beyond the (Chinese-dominated) urban areas to the country’s immiserated rural areas. Along these lines, in the context of privatization, I have elsewhere suggested strategies that marketizing governments might adopt to create broader distribution of market-generated wealth. Although careful tailoring to Vietnam’s particular circumstances would be necessary, such strategies might include ownership restrictions; rate, service, and product regulations; and environmental quality regulations. In addition, state-building initiatives, typically sponsored by international financial or development organizations and directed at establishing “functioning and accountable bureaucracies capable of enforcing the regulatory frameworks essential to the distribution of [the market’s] benefits,” will be essential to Vietnam’s development.

More specifically, marketization in Vietnam will have to deal with the complex position occupied by the Hoa. Assuming that the Chinese prove to be market-dominant in Vietnam (as they seem to be throughout Southeast Asia), the crucial question is whether this market dominance will trigger the kind of ethnonationalist dynamic predicted by the model.

On the exceptionalist view, it will not. If Vietnam’s relation to its Chinese minority really is an exception to the rule that has prevailed

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627. Id. at 201.
628. See, e.g., Gillespie, supra note 583, at 373-77; Jenkins & Terker, supra note 599, at 480; Taylor, supra note 584, at 470-78; Wohlgemuth, supra note 599, at 284, 290-91; Vecchi, supra note 599, at 23; Kokko, supra note 587, at 53-58.
629. Cf. Kokko, supra note 587, at 4 (indicating that the market’s benefits have been unequally distributed in Vietnam).
630. See Chua, supra note 18, at 288-98.
631. See id.
632. Id. at 299-300.
virtually everywhere else in Southeast Asia, then the pursuit of full-blown marketization (coupled with after-market social welfare programs) could be the best strategy for Vietnam. On this theory, the economic success of the Vietnamese Chinese should be actively encouraged and their entrepreneurial skills and experience harnessed to help fuel Vietnam’s development. Moreover, to the extent that Vietnam establishes itself as an attractive investment site for global Chinese capital, the country stands to gain enormously.

This strategy, however, raises certain risks, which will have to be carefully monitored. To begin with, corruption in Vietnam today is chronic and pervasive—Vietnam has been ranked “as one of Asia’s three most corrupt nations.” It is often hoped that marketization will ameliorate corruption in developing countries: “In general, any reform that increases the competitiveness of the economy will reduce incentives for corrupt behavior.” Unfortunately, the last decade has taught us that one of the most intractable problems of marketization in the developing world is corruption within the marketization process itself. In Vietnam, this danger could be particularly acute if the government pursues excessively pro-Chinese policies under the guise of marketization. Parasitic self-dealing arrangements between the Vietnamese ruling elite and Chinese business interests have a long history—as do popular reactions against the “greedy” and “unscrupulous” Chinese.

Even if there is more tolerance of Chinese economic success in Vietnam than there has been elsewhere in Southeast Asia, this tolerance will not be unlimited. To the extent that Vietnam seeks to harness Chinese economic energy and investment capital, every effort should be made to ensure that wealthy Chinese, inside and outside of Vietnam, make significant, visible contributions to local (and especially rural) Vietnamese communities. Such contributions could take the form of infrastructural improvements, housing, hospitals, schools, and so on.

More fundamentally, there is the risk that the exceptionalist view will prove to be a mirage. As detailed above, there is not only historical precedent for anti-Chinese movements in Vietnam but also some evidence of current anti-Chinese ethnoeconomic resentment. Accordingly, there remains a substantial possibility that markets and democracy in Vietnam,
coupled with disproportionate Chinese economic success, will trigger the destructive dynamic predicted by the model.

In these circumstances, the Vietnamese government should be discouraged from pursuing a Suharto-style strategy of preferential treatment for the Hoa.639 On the contrary, market preferences favoring the ethnic Vietnamese might be far more prudent. Along these lines, the Vietnamese government already has in recent years taken steps favoring overseas Vietnamese (as compared to other potential foreign investors), who are increasingly returning to, and investing in, Vietnam.640 Although such favoritism raises concerns of ethnic discrimination, especially from the point of view of the developed world, it may be justified and sensible for a country with Vietnam’s history.

As recent events in Bosnia starkly illustrate, ethnic relations even among relatively well-integrated groups are very unstable. In Vietnam, the prospects for free-market democracy will turn on the choices of political elites and on the tolerance of the Vietnamese for a resurgently successful Hoa community. Vietnam’s history offers precedents for the full range of reactions, from accommodationism to eliminationism. Unfortunately, the degree of ethnic intolerance in Vietnam is difficult—perhaps even impossible—to determine in advance. Of all the mines still buried in Vietnam, this one may pose the greatest threat to the nation’s future development.

VI. CONCLUSION

History never repeats itself exactly. Ethnic relations are volatile and malleable—for better or worse—and there is certainly room to hope for market miracles. Whether such a hope should form the basis of law and development policymaking, however, is another matter. The work of Western lawyers and legal academics in the developing world today—profound and transformative though it has been—has proceeded in blissful and almost willful ignorance of three crucial facts. The first concerns the relationship between markets and ethnicity; the second, the relationship between markets and democracy; and the third, the interplay among all three of these forces.

639. See supra text accompanying notes 312-317.
First, the idea that the invisible hand of the market will benefit some people over others is hardly new. Proponents of laissez-faire capitalism respect and relish the anonymous justice of the market insofar as it promises to reward anyone who is sufficiently entrepreneurial, hardworking, and lucky. In Part III, however, I demonstrated that markets tend to benefit not just some people over others, but also some ethnic groups over others in virtually every part of the world. In the developing world, moreover, markets often favor certain ethnic minorities over the rest of the population. This phenomenon in the developing world is potentially very destabilizing, yet it is almost uniformly disregarded by lawyers and scholars involved in marketization.

Second, in the developing world, the ethnic groups favored by the market are frequently different from the ethnic groups favored by majority rule. As a result, markets and democracy in the developing world are not always mutually reinforcing. On the contrary, they are constantly colliding, sometimes to good effect, but at other times, catalytically and catastrophically. What this means for marketizing and democratizing lawyers is that, like it or not, the work they do in the developing world—whether it is privatization, project finance, or constitutional advising—has implications for ethnic conflict. It also means that many Western policy suggestions may be dangerously myopic.

The final misperception concerns the relationship among markets, democracy, and ethnicity. Prevailing law and development orthodoxy assumes that marketization and democratization—the current prescription for economic and political underdevelopment—will cure ethnic conflict too. By contrast, this Article insists that marketization and democratization—to the extent that they are successful—may, in countries such as South Africa, Kazakhstan, and Vietnam, and throughout the developing world, catalyze ethnic tensions in a highly determinate and predictable fashion. The market will not lift the great majority of citizens out of poverty. Rather, it will aggravate, at least in appearance and probably in reality, the existing ethnic maldistribution of wealth. Democracy will not make all voters imagine themselves as coparticipants in a fraternal national community. Rather, the competition for votes will more likely foster the emergence of ethnic political entrepreneurs (particularly among the impoverished majority) and active ethnonationalist movements. Markets and democracy cannot be regarded unproblematically as solutions to the dangers of ethnic strife in deeply divided societies. Particularly given the unprecedented international influence of American lawyers today,

marketizing and democratizing lawyers who continue to ignore the developing world’s historic distributional problems, especially its ethnodistributional problems, are engaging in “romanticism or worse.” 642

642. GEERTZ, supra note 95, at 156 (referring to the blind faith in the ability of laissez-faire to achieve sustainable growth in developing countries as “romanticism or worse”).
Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South

Ariela J. Gross†

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