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视角

中国 与 世界

# PERSPECTIVES

## China and the World

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Executive Editor of Issue: **Sida LIU**
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# From the Editors

August 8th, 2008, an extremely hot and humid summer night in Beijing. As the huge painting volume was steadily unfolded in the dazzling Bird's Nest, a strong national pride undoubtedly arose from the hearts of hundreds of millions of Chinese in front of the television. It broke the heaviness of the hundred-year modern history and swiped the dark clouds of the earthquake, the snow storms, and the Lhasa riot, seeming to claim to the world that the great revival of Chinese civilization is coming soon.

Nevertheless, when this historic Olympics was concluded, the Sanlu milk formula scandal, which had been covered up by the ugly political veil, was finally exposed in front of the world. It relentlessly smashed the confidence that Chinese people had just picked up, and it makes us understand once again that, for a government not accountable to the people, even if it can use the power of the whole nation to create a centurial grand ceremony, even if it can act like "president calling, premier shouting" when the most serious natural disaster in 30 years struck, it can also shamelessly say the numb official words such as "lack of political sensitiveness" when facing thousands of babies with kidney stones in their tiny bodies.

More importantly, when the seven-year Olympics dream has become yesterday's show, when the huge wave of the global financial crisis has become an obstacle for the rapid GDP growth, how will this government that we love and hate deal with its own legitimacy crisis? Su SUN's article focuses on the relationship between media and corruption. He discusses and compares three articles in economics to illustrate that media attention and supervision has effective disciplinary functions for government behavior. During the Sichuan earthquake, China's domestic media enjoyed unprecedented freedom of reporting. Those sensational and touching images through the camera significantly boosted the solidarity of citizens and the credibility of the government. But the development of the Sanlu milk scandal clearly demonstrates how difficult it is to transform from government-controlled media to a media-supervised government.

In this chaotic year, many people seem to have overlooked an important foreign policy event, the June agreement on East China sea gas deposits between China and Japan after Hu Jintao's visit to Japan. Although the Chinese government tried hard to play down this event in its media propaganda, it still generated debates on the internet both in China and abroad, even some voices blaming the government for "selling the country." In fact, to fully understand Sino-Japanese relations, we must begin with the "history issue" between Japan and other East Asian countries. From the theoretical perspective of

# 编 辑 寄 语

2008 年 8 月 8 日，一个无比闷热的北京夏日夜晚，当那幅巨型画卷在眩目的鸟巢内徐徐展开，电视机前的数亿炎黄子孙，心头无疑都升腾起了一种强烈的民族自豪感。它冲破了百年近代史的沉重，拨开了地震、雪灾、拉萨骚乱的层层阴云，似乎在向世人宣告，中华文明的伟大复兴已是指日可待。

然而，就在这次凝结了太多历史意义的奥运盛会落幕之际，被那丑恶的政治遮羞布掩盖了许久的三鹿奶粉事件也终于大白于天下，它无情地将国人刚刚拾起的一点信心击得粉碎，也让我们再一次明白，一个不向人民负责的政府，即使能以举国之力创造一次百年盛典，即使能在三十年不遇的天灾之际"主席唤、总理呼"，却也可以在直面全国各地成千上万腹中长满结石的幼小身躯时，毫无羞耻地说出"政治上敏感性差"这般麻木不仁的官话。

而更为重要的是，当七年的奥运梦想一夜之间成为了昨日绝唱，当全球金融危机的巨浪阻碍了 GDP 的高速增长，这个让我们又爱又恨的政府将如何应对其自身的合法性危机？孙速的文章针对媒体与腐败的关系，通过对三篇关于这一题目的经济学论文的探讨与比较，试图说明媒体的关注与监督对于政府行为的有效规制作用。在汶川地震期间，国内媒体获得了空前的报道自由，镜头里那些触目惊心、感人肺腑的画面，极大地增强了国民的凝聚力与政府的公信力。而三鹿奶粉事件的发展过程却清楚地显示，从政府控制媒体到媒体监督政府的转变有多么艰难。

在这一年的纷乱之间，许多人都似乎忽略了一个重要的外交事件，这就是胡锦涛访日之后中日两国于六月达成的东海油田开发协议。虽然中国政府在媒体宣传上极力淡化这一事件，它还是在海内外的网络上掀起了轩然大波，甚至出现了指责政府"卖国"的声音。事实上，要深入理解中日关系，必须从日本与其他亚洲国家之间的"历史问题"入手。陈婧的文章从国际关系理论的角度比较了日本与德国在对待二战遗留问题上的区别，认为中日关系始终被"历史问题"所困扰的一个重要原

international relations, Jing CHEN's article compares Japan and Germany in terms of their difference in treating the remaining problems of WWII. She argues that an important reason for the continuing plague of the "history issue" in Sino-Japanese relations is the failure of the international justice system after WWII. The book review by Jin CHEN demonstrates the same logic from another perspective, that the capacity of the so-called "international society" in improving international relations is limited.

We publish two field notes in this issue. John MORRISON and Karen EGGLESTON's article discusses in detail the background, functions, and policy suggestions for developing commercial insurance in China. Thomas TALHELM's article uses his teaching experience in China to compare the different psychological inclinations of Chinese and American people and how this difference influences the system of education. Finally, the OYCF report presents CAI hua's report on teaching corporate law at China University of Political Science and Law.

As always, we hope you enjoy this issue of *Perspectives* and warmly welcome your comments, suggestions and manuscript submissions.

Wish you all a pleasant autumn!

Sida LIU

Executive Editor

因是二战后所形成的国际正义体系的失败。而陈晋的书评则从另一个角度说明了相同的道理，即所谓“国际社会”对于改善国际关系作用的有限性。

本期刊登两篇田野采风，John Morrison 和 Karen Eggleston 的文章详细讨论了在中国发展商业保险的背景、作用及政策建议。Thomas Talhelm 的文章则结合他在中国教书的经历比较了中国人和美国人在心理上的不同倾向，以及这一区别对教育制度的影响。最后，本期的论坛简报刊载了蔡华在中国政法大学讲授公司法的教学报告。

我们一如既往地希望这一期《视角》能带给您阅读的愉悦，并真诚欢迎您给我们寄来评论、建议和稿件。

祝秋季愉快！

刘思达

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# 用媒体限制腐败-----经济学研究的几个案例

# Using Media to Control Corruption – Cases from Research in Economics

孙 速

（ Su SUN）

［**内容提要**］本文针对媒体与腐败的关系，通过对三篇关于这一题目的经济学论文的探讨与比较，试图说明媒体的关注与监督对于政府行为的有效规制作用。

**[ABSTRACT]** This article focuses on the relationship between media and corruption. The author discusses and compares three articles in economics to illustrate that media attention and supervision have effective disciplinary functions for government behavior.

腐败问题在中国已被公认为一个严重的社会问题。中国政府近年来对腐败加大打击力度，媒体更多地报道一些腐败案件的来龙去脉，民间维权反腐的行动也很活跃。学术界对腐败问题也有相当的讨论，比如中国的经济学界曾争论腐败对经济发展到底有何影响，是否在现阶段存在能促进经济增长的“有效率的腐败” 。[1]

对腐败的经济学研究，在西方经济学界近十几年来是一个相当热门的课题。《经济视野杂志》(*Journal of Economic Perspectives*)是美国经济学会出版的相当有影响的经济学期刊，经常发表由各个经济学领域卓有成就的专家撰写的经济研究的综述性学术文章。该期刊 2005 年第 3 期发表了一篇综述性论文：《关于腐败的八个问题》。[2] 这篇论文的作者在瑞典斯德哥尔摩大学任教，同时也是世界银行的高级经济学家。作者在文章中通过八个问题总结了目前关于腐败研究的经济学成果：一、什么是腐败(“腐败是一种结果，是一个国家的法律、经济、文化、政治制度的体现”)；二、哪些国家最腐败(通过四种不同的衡量指数选出的四组腐败最严重的 10% 的国家)；三、高腐败国家的共同特征是什么(人均产出低，教育程度低，竞争和开放程度低)；四、腐败有多严重(依国家、行业而不同)；五、高薪是否能养廉(未必)；六、竞争能否减少腐败(一般来说能)；七、为什么反腐鲜有成功(反腐的主要工具---法律和金融体系---薄弱且本身腐败)；八、腐败是否阻碍经济增长(是)。文章在最后特别提出中国的特殊性：中国的腐败程度较高，但仍能保持经济的长期高速增长，是腐败在中国危害较小，还是中国本来可以有更高的增长速度？显然，许多问题还未有定论。

能在不同程度上减少腐败的因素很多，媒体监督是比较显著的一个。在中国，许多腐败大案的揭露始于媒体的曝光，特别是报纸的报道。近年来互联网的迅速普及又增加了一个新的监督机制，一些网上传播的信息和图片，冲破地域限制，短时间内能造成巨大的影响，从而导致中央对地方腐败事件的注意和调查。这些个别的案例显示媒体对揭露和惩罚腐败的功效。这种揭露是否能预防和减少腐败呢？一些宏观数据的回归分析表明，一个国

[1] 关于腐败和效率的关系的研究综述，见陆挺，“腐败、经济效率和福利”，《视角》中文版，第 4 卷，第 3 期，2004 年 7 月 31 日。

[2] Jakob Svensson, “Eight Questions about Corruption,” *Journal of Economic Perspectives*, Vol.19, No.3, Summer 2005.

家的媒体自由度和腐败程度是成显著反比的。[3] 但宏观研究往往难以确定二者的因果关系。本文介绍三个对于腐败问题的案例研究，希望能为读者提供一些经济学家对这一问题的思考方法。[4]

第一篇文章是 2002 年发表在《美国经济评论》上的《赢不是一切：相扑中的腐败》。[5] 相扑比赛在日本极受欢迎，通常一项正式比赛的赛季包括近七十名选手每人比十五场。相扑手的报酬并非按所赢的场数线性递增。如果能赢八场就会提升他的排名并带来很高的报酬，赢完八场之后再赢的额外报酬很少。若赢不了八场，相扑手的排名就会下降，对他们而言，多赢或少赢一场也没多大分别。在这种排名和报酬体制下，最后一场比赛如果是一个已经赢了七场(也输了七场)的选手和一个基本上无所谓的选手(或者已赢了至少八场，或者已输了至少八场) 相对，赢的重要性在两个选手之间显然是不对称的。这种赢的重要性对在倒数第二场比赛中已经赢了六场或七场比赛的选手来说会少些，在更前面的比赛中会更少。文章的两位作者在对从 1989 年到 2000 年十多年的比赛结果数据的分析中发现，在对手类似的情况下，赢得最后一场比赛（第 15 场）对其至关重要的相扑手取胜的次数要比在不这么重要的比赛中取胜的次数多出 25%，在第 14 场比赛中这个多出的概率是 15%，第 13 场是 11%，第 12 场是 5%，之前则没有区别。作者认为这里面至少有一部分是因为已经注定输了的选手有意配合。

这个结论存在一个问题，那就是这多出的获胜概率也可以有其它解释，比如因为这场比赛非常关键，所以这个选手比平常更加卖力。为了弄清楚这个问题，作者跟踪那些赢得最后一场对其至关重要的比赛的相扑手后来的表现。作者发现这些赢了的选手在后来对他们不重要的比赛中碰到同一对手时输的情况居多。作者认为这种结果是对合谋伙伴的回报。

作者进而发现另一有趣规律：当他们去分析有媒体转播的比赛的数据时，输赢至关重要的选手多赢的概率不见了。这说明有了媒体的注意和监督，相扑手不那么敢搞合谋的腐败交易。相扑虽只是一种运动，但媒体限制腐败的作用是很有启示意义的。

第二个案例是《经济视野杂志》（*Journal of Economic Perspectives*）2004 年的一篇文章《怎样破坏民主：秘鲁的蒙提塞诺》。[6] 秘鲁在整个九十年代是由滕森政府执政。滕森上台后，剿灭光辉道路，抑制超级通货膨胀，引进外资，一时间在国内外深得人心。滕森虽以铁腕强人的面孔出现，但他上台时政治基础薄弱，所以重用有军队背景的蒙提塞诺，负责全国情报系统的运作。

秘鲁有一整套民主机制：宪法规定的总统任期限制，有反对党参加的选举，独立的司法体系，自由的媒体。在这种至少是形式上的民主体制之下，政治腐败需要通过暗箱操作。为巩固滕森政府的权力，蒙提塞诺大量地使用贿赂手段去拉拢各方支持。蒙提塞诺行贿有个特点，那就是他将每次行贿的过程都录制下来。据估计他一共摄制了两千多个这样的录像带。他甚至要求受贿者签订秘密合同，列出受贿者应尽的义务，对贿赂的钱款还要给他开出收据。这些录音带、录像带、合同、收据不但成为蒙提塞诺对受贿者的要挟，也是他针对滕森的自我保护伞。只要他手里握有这些足以导致滕森政府垮台的证据，滕森就不敢轻易踢开他。

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[3] 见脚注 2，表 5。另见陈志武，“市场经济的必要制度机制：新闻媒体”，《视角》中文版，第 3 卷，第 1 期，2003 年 1 月 31 日。

[4] 更多的经济学案例可参见本文引用的文章中的参考文献。

[5] Steven Levitt and Mark Duggan, “Winning Isn’t Everything: Corruption in Sumo Wrestling,” *American Economic Review*, Vol.92, No.5, December 2002.

[6] John McMillan and Pablo Zoido, “How to Subvert Democracy: Montesinos in Peru,” *Journal of Economic Perspectives*, Vol.18, No.4, Fall 2004.

斯坦福大学的两位经济研究人员搜集和分析了大量的录像录音记录、行贿收据、记者调查报告、法院记录、以及对当事人的采访。这些数据覆盖了 1998-2000 年，也是滕森政府的最后三年。这期间蒙提塞诺的主要目的是使滕森第三次当选。作者总结了蒙提塞诺行贿的一些规律。蒙提塞诺贿赂的对象主要有三种。一是政治人物，特别是反对党。二是各级法官，其中包括最高法院大法官和全国选举委员会的法官。三是媒体，包括电视台所有者和报纸发行人。显而易见，这三种对象都是民主制度正常运行的重要支柱。

作者把注意力集中在对这三种人行贿的数额上。对政治家的贿赂金额少的每月三、五千美元，最多的每月达五万美元。对法官的贿赂一般来说略高。对媒体的贿赂是最昂贵的。例如一份签字的合同显示，秘鲁最大的电视四台从 1999 年 11 月到 2000 年 4 月每月得到一百五十万美元的贿款。从平均每月的总额来看，贿赂政客以求得国会多数需要接近三十万美元，贿赂法官大概花费二十五万美元，而贿赂电视台则需三百万美元。对媒体的贿赂还没有包括通过广告送的钱。九十年代后期，政府成为秘鲁报纸和电视台最大的广告客户。

为什么蒙提塞诺贿赂媒体的钱远远多于贿赂政客和法官的钱呢？作者认为一个简单的解释就是媒体本身更有钱。对政客和法官的贿赂金额是他们正常收入的几倍，可同样的数额对经营媒体的企业家来说恐怕看不上眼。不过更重要的是，要在议会取得多数，蒙提塞诺不需贿赂所有的反对党议员。秘鲁国会有 120 名议员，2000 年滕森的党“秘鲁 2000”占有 51 席。滕森只需再有 10 席就可取得多数。蒙提塞诺贿赂了 12 名反对党议员，让他们转投了滕森的党。蒙提塞诺还另外收买了 5 名议员，但让他们留在各自的反对党内充当眼线。同样，蒙提塞诺只需贿赂少数重要案件中的法官。

媒体则不同。只要有一个媒体没有被收买，它就可能发出反对的声音，造成相当的影响。政客和法官毕竟只是民主的一种间接运作方式，而媒体直接与民众连接。蒙提塞诺对媒体的控制是相当看重的。在媒体中，他又更看重电视台，因为电视比报纸覆盖面广得多。秘鲁最大的报纸只有六十万的发行量，而二千八百万人口的大多数可以看到电视。在报纸方面，蒙提塞诺更看重大众化的报纸，而对以精英阶层为主要读者的报纸似乎不那么担心。

有一家小的电视台蒙提塞诺最终没有收买成，那就是有线电视 N 台。或许是因为这家电视台的所有者重视其信誉的传统使其难以收买，或许是因为蒙提塞诺没有把这样一个只有几万订户的有线电视台放在眼里。而正是这家小小电视台最终将滕森拉下马。2000 年 9 月，两名反对党议员获取了蒙提塞诺贿赂议员考瑞的录像带，并在利马一家酒店召开记者招待会将之公布于众。有线电视 N 台开始不停地播放这段录像，其它接受贿赂的电视台也不再沉默，相继跟进报导，引发大规模的示威活动，最终导致政府更换。蒙提塞诺被捕，滕森流亡日本。

作者指出，秘鲁的经历似乎说明，虽然政治竞争和司法独立都很重要，媒体在维护民主法治和监督限制腐败上作用尤为突出。

研究媒体限制腐败作用的另一例是对乌干达中央政府给地方学校拨款被贪污情况的研究。[7] 乌干达是亚撒哈拉地区经济增长较快的国家，但同时腐败程度也很高。对企业界的调查显示，80%的公司认为需要向政府官员行贿，贿赂金额平均占经营成本的 8%。另外的 20%的公司表示它们尽量减少和与政府有关的行业的接触，从而导致社会整体资源分配的扭曲和经济效率的丧失。在公共财政方面，乌干达中央政府有一项每月拨款补助地方小学的政策，由地方政府具体发放。大约 8500 所政府办的小学应得到这样的补助。根据一项

[7] Ritva Reinkka and Jakob Svensson, “Local Capture: Evidence from a Central Government Transfer Program in Uganda,” *Quarterly Journal of Economics*, Vol.119, No.2, 2004. Ritva Reinkka and Jakob Svensson, “The Power of Information: Evidence from a Newspaper Campaign to Reduce Capture,” (December, 2003). World Bank Policy Research Working Paper No. 3239. Available at SSRN: http://ssrn.com/abstract=610280. 另见脚注 2。

调查，作者计算了 250 所地方小学收到的拨款数额，并与中央拨款实际数额进行比较。他们发现 1995 年，学校平均仅收到 24%的拨款，其余则通过各种方式被地方官员所挪用或侵吞。大多数学校甚至没收到任何拨款。

乌干达的中央政府在得知这一情况后，开始在报纸上公开发表每月向各个地区学校拨款的数额。这是中央政府有效利用大众媒体公开信息以便公众监督的一个很好的案例。由于有及时可靠的信息，学校和家长就可以很好地监督地方官员。事实证明这个办法是有效的。2001 年学校平均收到了 80%的中央拨款。

经济计量研究中常常遇到的一个问题是，简单的回归分析只能表明一种相关性，比如乌干达中央政府使用报纸公开信息之后地方小学收到的拨款明显增加，这表明两者之间有正相关。但这并不能证明二者之间有因果关系。从时间上来看，也许同时发生的其它事件，而不是媒体对拨款数额的报道，是导致学校收款改善的真正原因。从学校间的比较来看，虽然对拨款项目越了解的学校实际收到的拨款越多，但也可能正是因为这些学校收到了很大比例的拨款，他们才对拨款项目更加了解。

为解决这一因果问题，作者先测试学校老师对拨款项目的规则和中央政府拨款时间的了解程度，发现它与最近的报摊和学校的距离成正比。然后他们用报摊和学校的距离替代老师对拨款项目的熟悉程度，作者发现中央政府政策实施后这个距离变量显著地影响了学校收到的拨款数额，而在此前二者没有任何明显关系。由于报摊和学校的距离不太可能受拨款数额的影响，中央政府在报纸上公开拨款信息的政策导致学校对拨款的了解增加是因，学校得到更多拨款是果，这样的因果关系就得到验证了。

以上的三个由经济学家来研究腐败的案例清楚地表明，大到国家政治，中到学校拨款，小到一场比赛，政府都可以通过鼓励和提高媒体的监督机制来限制腐败行为的发生。

**孙速**在华盛顿市的一家经济咨询公司工作。
***Su SUN*** *is an economist at an economic consulting firm in Washington DC.*

# The Origin of the "History Issue" between Japan and Other Asian States: A Case of Failed International Justice

# 日本与其他亚洲国家之间"历史问题"的起源：一个关于失败的国际正义的例子

Jing CHEN

（陈 婧）

**[ABSTRACT]** This article finds that successful international justice (averting atrocities) depends on neither trials nor amnesties but relies on effective international and domestic political coalitions to enforce justice. Based on this finding, the history issue between Japan and other Asian states is explored in contrast with the Germany case.

［内容提要］本文发现成功的国际正义（避免暴行）并不取决于审判或者大赦，而是依赖于有效的国际国内政治联盟来执行正义。基于这一发现，文章探究日本与其他亚洲国家之间的历史问题，并与德国相比较。

> "Remembrance of history is aimed at ensuring that instead of extending hatred, the two nations may take history as a mirror to look forward to the future, and cherish and maintain peace, so that the Chinese and Japanese peoples can maintain warm ties for generation after generation, and all peoples in the world can enjoy peace and stability forever."
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> ----Chinese President Hu Jintao's Speech at Waseda University.[1]

Chinese President Hu Jintao's "Warm Spring Trip" to Japan in May 2008 provides a new hope for improving China-Japan relations---the pillar for Asian regionalism, which unfortunately falls far behind Europe. Actually when it comes to regionalism, the differences between Europe and Asia are dramatic. While Europe has evolved into an integrated union with twenty five member states, seeking to enhance political, economic and social cooperation, a corresponding Asian regional organization is not in sight. Among the biggest impediments to Asian regional integration is that of fierce differences in interpreting modern history. Without a shared interpretation of their past, various Asian countries find it difficult to make real progress towards future regional integration.

In trying to explain these Asian tensions over interpreting the past – particularly those tensions between Japan and other Asian states – I will focus on the origin of the "history issue" from the perspective of international justice. I argue that the failure of international justice at the end of World War II prompted the emergence of this highly volatile issue. Without understanding the root of the history issue, I believe that we will not be able to completely understand the persistence of the history issue either.

[1] http://english.sina.com/china/1/2008/0508/157620.html

To examine this argument, I will first explore two existing explanations of the persistence of the history issue and argue why we should not neglect the origin when we tend to focus on the persistence of this issue. Then I will present my own argument by first looking at the relationship between justice and effective international and domestic political coalitions. Drawing on Snyder and Vinjamuri's view of international justice, I find effective international and domestic political coalitions are the key to successful international justice. Then employing this logic and comparing the divergent paths between the Japan case and the Germany case, I will explain how failed international justice led to the inception of the "history issue" in Asia.

## EXISTING EXPLANATIONS FOR THE PERSISTENCE OF THE "HISTORY ISSUE" BETWEEN JAPAN AND OTHER ASIAN STATES

Nationalism and governmental manipulation are the two most common explanations for the history issue between Japan and other Asian states.[2] For example, Ian Buruma[3] gave a talk entitled "A Poisoned Legacy: Nationalism in China, Korea, and Japan" at Princeton University on November 16, 2005. He attributed the history issue in Asia mainly to nationalism and educational systems controlled by governments. Certainly, nationalism is part of the reason why the history issue persists. However, such an argument fails to tap the difference between the origin and the durability of the history issue. Any argument that neglects the inception of this issue is incomplete. In my mind, the argument concerning government manipulation has the same problem. It can only explain why the history issue persists but misses the question of the origin of the issue.

This paper will fill in the blank and provide an argument for the origin of the history issue between Japan and other Asian states. I argue that if international justice in Asia was as successful as in Europe, the history issue would not emerge in Asia in the first place. Successful international justice, on the other hand, depends on effective international and domestic political coalitions. Let's first take a look at the theoretical basis of my argument before we turn to our empirical cases—Japan and Germany.

## JUSTICE AND EFFECTIVE POLITICAL COALITIONS

Five major arguments are offered by liberals to support their claim that international crime tribunals not only provide justice, but also create the foundation for a durable peace. Specifically, they argue that international crime tribunals create conditions conducive to peace and stability in several ways: first, by purging threatening enemy leaders; second, by deterring war criminals; third, by rehabilitating former enemy countries; fourth, by placing the blame for atrocities on individuals rather than on whole ethnic groups; and fifth, by establishing the truth about wartime atrocities. Bass examines all these five arguments and finds that only the fifth one "seems to be unambiguously worthy." Despite the unimpressive record of war crime tribunals, with the one exception of Nuremberg, Bass still prefers these tribunals to other approaches such as "simple vengeance by the aggrieved parties." He argues that "it is not that these complicated and often muddled trials are too noble to question; it is that the other options would be worse."[4]

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[2] See Peter Gries, *China's New Nationalism: Pride, Politics, and Diplomacy* (Ewing, NJ, USA: University of California Press, 2004). This book specifically deals with China's nationalism as indicated in its title. Peter Gries, "China's 'New Thinking on Japan," *The China Quarterly*, Vol.184, December 2005. pp831-850.

[3] Ian Buruma: Henry Luce Professor of Democracy, Human Rights and Journalism, Bard College

[4] Gary Bass, *Stay the Hand of Vengeance* (Princeton, NJ: Princeton University Press, 2000), pp.285-287.

Jack Snyder and Leslie Vinjamuri, however, disagree with Bass.[5] Using empirical study as Bass also does, they argue that "amnesties or other minimal efforts to address the problem of past abuses have often been the basis for durable peaceful settlements."[6] In their view, amnesties, rather than trials, are the best strategies of international justice when spoilers are strong. Why has that been the case? They point out that "both amnesties and trials *require* effective state institutions and political coalitions to enforce them. Without those conditions, neither approach is likely to succeed."[7] At the same time, they argue that amnesty may be a necessary tool in political bargains that "*create* effective political coalitions to contain the power of potential perpetrators of abuses (or so-called spoilers)."[8] Therefore, in their view, amnesties and effective political coalitions are positively related and mutually enhanced by their interaction. However, this brings about an endogenous problem in their argument: amnesty is a tool to create effective political coalitions, and in turn these political coalitions make amnesty successful. This begs a question of their argument: which is the ultimate basis for durable peaceful settlements and international justice---amnesty or effective political coalitions?

Although seemingly unaware (or perhaps oblivious) of this endogenous problem, they indeed offer a partial answer to the question mentioned above by arguing in their conclusion: "…deciding what approach to adopt in a particular case requires *political judgment*. Consequently, decisions to prosecute should be taken by *political authorities*, such as the UN Security Council or the governments of affected states, not by judges who remain politically unaccountable."[9] At the beginning of their article, they also give another relevant argument: "Recent international criminal tribunals have utterly failed to deter subsequent abuses in the former Yugoslavia and Central Africa. Because tribunals, including the International Criminal Court (ICC), *have often been unable to gain the active cooperation of powerful actors in the United States and in countries where abuses occur*, it is questionable whether this strategy will succeed in the long run unless it is implemented in a more pragmatic way."[10] This also helps clarify what really accounts for the occasional successes of then enduring peaceful settlement and international justice: it is effective political coalitions that are key!

Therefore, in my mind, Snyder and Vinjamuri are correct in arguing that "justice does not lead; it follows."[11] Justice follows effective political coalitions--- international and domestic. Justice depends upon effective enforcement by these coalitions. Without effective political coalitions, there is no justice. To some extent, justice and peace are both outcomes generated by effective political coalitions. Justice and peace are related but not necessarily causally related. However, when people want to explore the relationship between justice and peace, they must follow the logic of consequences: "whether it leads to the right outcome (or not)."[12]

Justice, in Snyder and Vinjamuri's view, means to avert atrocities and secure human rights; indeed, in their view, those are the criteria for evaluating whether justice has been successfully achieved. Following this logic, they conclude that amnesties are better strategies than tribunals "when spoilers are strong and when the new regime can use an amnesty to decisively remove

[5] Jack Snyder and Leslie Vinjamuri, "Trials and Errors: Principle and Pragmatism in Strategies of International Justice," *International Security*, Vol.28, No. 3 (Winter 2003/04), pp.5-44.
[6] Ibid, p.43.
[7] Ibid., p.44.
[8] Ibid., p.6.
[9] Ibid., p.44.
[10] Ibid., p.5.
[11] Ibid, p.6.
[12] Ibid., p.7.

them from power."[13] Thus, under those conditions, they see amnesties as more effective in averting atrocities and securing human rights. Tribunals, therefore, are no longer the only possible alternatives to vengeance, but just one of the means to international justice. In this respect, they advance the argument of the relationship between justice and peace to a deeper level than Bass does. However, neither Bass nor Snyder and Vinjamuri clearly argue that both justice and peace depend on a third independent factor—effective political coalitions which can enforce justice and peace.

Having established that political coalitions are the key to international justice and peace, let me show how this relates to the "history issue" between Japan and other Asian states. Specifically, I seek to explain why Nuremberg is the only successful exception—as Bass argues—in war crimes tribunals' history; and why Tokyo, by contrast, is a failure that led to the history issue between Japan and other Asian states.

Since Snyder and Vinjamuri have already provided empirical study to support my argument that effective political coalitions are the key to international justice, I will not make this argument again.[14] I will directly apply this argument to explain the history issue between Japan and other Asian states. However, before we turn to the issue, let's examine the concept of effective international and domestic political coalitions.

## DEFINING EFFECTIVE INTERNATIONAL AND DOMESTIC POLITICAL COALITIONS

Effective international and domestic political coalitions, in this paper, mainly refer to the coalitions between those states among which the atrocities occur and other states that can help make and implement a just decision. This section specifically examines the concept of coalitions and tries to operationalize that concept by referring to the literature.

According to Stevenson, Pearce, and Porter, a coalition has eight defining characteristics that must be present: (1) an interacting group of individuals, (2) deliberately constructed, (3) independent of the formal structure, (4) lacking its own internal formal structure, (5) consisting of mutually perceived membership, (6) issue oriented, (7) focused on a goal or goals external to the coalition, and (8) requiring concerted member action.[15] This definition of a coalition is invoked within the organizational context. However, it can be applied to explore the concept of international and domestic political coalitions.

Riker provides another definition of a coalition from the perspective of political decision-making. He first draws on David Easton's concept of politics as the authoritative allocation of values. Then he classifies those authoritative decisions into two broad categories: (A) those made by individuals, and (B) those made by groups. Furthermore, he divides category B into two types: (B1) Those made by conscious processes and (B2) Those made in a quasi-mechanical way. He finds that the process of conscious decision-making by groups (category B1) is invariably a process of forming coalitions if the groups in question consist of more than two persons.[16] Therefore, the definition of a coalition provided by Riker is as follows:

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[13] Ibid, p.44.
[14] Ibid, pp.17-39.
[15] William B. Stevenson, Jone L. Pearce, and Lyman W. Porter, "The Concept of 'Coalition' in Organization Theory and Research," ( *The Academy of Management Review*, Vol. 10, No. 2. , April, 1985.), pp.256-268.
[16] William H. Riker, *The Theory of Political Coalitions* (New Haven: Yale University Press, 1962), pp.10-12.

> Typically some part of the authority-processing group comes together in alliance to render a decision binding on the group as a whole and on all who recognize its authority. This decisive "part" may be more or less than one-half, indeed it may be two persons or the whole group itself. But regardless of the number of persons conventionally believed to be decisive, the process of reaching a decision in a group is a process of forming a subgroup which, by the rules accepted by all members, can decide for the whole. This subgroup is a coalition.[17]

Based on the above literature, I define effective international and domestic political coalitions as a subgroup of states (consisting of the state, among which atrocities occur) that has the authority to make a just decision and has the capacity to implement that decision. The eight characteristics of a coalition given by Stevenson, Pearce, and Porter can be used as criteria to evaluate whether a coalition exists except that the members should be limited to states. Ultimately, the effectiveness of such a coalition in international justice depends on whether it helps avert atrocities in the future and whether there is backlash. Now we can turn to the history issue between Japan and other Asian States.

## THE "HISTORY ISSUE" BETWEEN JAPAN AND OTHER ASIAN STATES IN CONTRAST WITH THE GERMANY CASE

Let me quickly restate my initial point before turning to the Asian situation. International justice cannot be achieved without effective political coalitions. Effective political coalitions can effectively enforce the policy to achieve international justice. Therefore, international justice is not something that is guaranteed. When there are effective political coalitions, international justice can be expected; when there are no effective political coalitions, there is no reason to expect any instances of international justice. The "history issue" between Japan and other Asian states is a case in point.

The Asian "history issue" centers around the denial of the real history of the Japanese invasion of Asia in the 1930s and 1940s by some Japanese officials, scholars, and even the general Japanese public. It mainly involves the following two issues: 1) Japan's revision of history textbooks, which plays down Japan's wartime atrocities and depicts the Japanese invasions as a liberation of other Asian countries from western powers; 2) Japanese leaders' visits to Yasukuni shrine, honoring war dead, including fourteen Class-A war criminals convicted in the Tokyo tribunal. The history issue is further complicated by requests for Japanese compensation for war-time labor and sex slavery.

In the liberal' view, the denial of atrocities is in fact part and parcel of committing atrocities.[18] The Tokyo tribunal is a failure in this respect because it did not avert the "denial of atrocities." Many in Japan, including some of its leaders, are still denying the atrocities it inflicted on its Asian neighbors. Other Asian states and their people must still suffer Japanese denials even though World War II ended over 60 years ago.

Why is this unresolved issue a serious impediment to Asian regionalism today? Aaron Friedberg argues that controversies over history in Asia "both reflect and reinforce feelings of national identity and difference."[19] He draws on Stephen Van Evera's view of how "a single

[17] Ibid., p.12.
[18] Bass, *Stay the Hand of Vengeance*, 2000, p.302.
[19] Aaron L. Friedberg, "Ripe for Rivalry: Prospects for Peace in a Multipolar Asia," *International Security*, Vol.18, No.3 (Winter, 1993-1994), p18.

shared version of European history" contributes to the stability of Europe.[20] By comparing Europe with Asia, Friedberg argues that "the Asian powers show signs of divergence, each constructing a history that serves its own national purposes."[21] When referring to controversies between Japan and other Asian states, Friedberg insightfully points out that "the extreme sensitivity on these matters *reveals the depth of old wounds and the extent to which they remain unhealed*, even between countries that were nominal allies during the Cold War."[22] In short, failed international justice left the lingering "history issue" between Japan and other Asian states.

Now let me turn to the absence of effective international and domestic political coalitions to enforce justice on Japan at the end of World War II. The Tokyo Tribunal (International Military Tribunal for the Far East, 1946-1948) opened on May 3, 1946, under orders from Gen. Douglas MacArthur, then Supreme Commander for the Allied Powers. After hearings lasting through November 1948, the tribunal branded twenty-five defendants as Class-A war criminals, seven of whom – including wartime Prime Minister Gen. Tojo – were later hanged.[23]

Before the opening of the Tokyo Tribunal, the Cold War had begun. On March 5, 1946, in Fulton, Missouri, Winston Churchill delivered his famous "Iron Curtain" speech, urging the West to unite against the Soviets. In Asia, the United States shifted its policy to strengthen Japan as its newfound Pacific ally instead of punishing it for past acts. A Japanese scholar argues that: "Preferring stability over radical changes in the Japanese government, the United States decided not to prosecute the late Emperor Showa for his role in the war, limiting the focus of the tribunal to a handful of wartime leaders…" [24]

Given the fact that Japan did not have a stable government until October 1948 when Yoshida Shigeru returned to the government[25], there were no Japanese domestic political coalitions to pursue international justice. Japan was, of course, completely under U.S. occupation after the end of World War II. When the United States shifted its focus from justice after World War II to a new anti-Soviet and anti-communist alliance in the Cold War, there were no effective international political coalitions to enforce international justice either. Given the important role of the United States, its policy towards Japan during the Tokyo Tribunal deserves a review.

According to Kenneth G. Henshall, a New Zealand scholar, the Tokyo Tribunal did not try many Japanese who might have been considered culpable. For instance, the staff of Unit 731 escaped the trial, although they "had conducted numerous biological and chemical warfare experiments on civilians and prisoners of war." They were released without trial because the Americans "offered immunity in return for scientific data from the experiments that their own ethics and laws prevented."[26] Judging from this and other behavior at the tribunal, it is hard for both Japanese and its Asian neighbors to believe that the Tokyo Tribunal brought real and

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[20] Stephen Van Evera, "Primed for Peace: Europe after the Cold War," *International Security*, Vol.15, No.3 (Winter, 1990-1991), p.24.

[21] Aaron L. Friedberg, "Ripe for Rivalry: Prospects for Peace in a Multipolar Asia," *International Security*, Vol.18, No.3 (Winter, 1993-1994), p18

[22] Ibid., p.19.

[23] Yoshida Reiji, "60 Years On, Japanese Debate the Tokyo Tribunal's Legitimacy," *Japan Times*, August 4, 2005. http://www.zmag.org/content/showarticle.cfm?SectionID=17&ItemID=8933

[24] Ibid.

[25] The changes of Japanese government during 1946-1948 are as follows: Shidehara Kijuro (before April 1946); Hatoyama Ichiro (elected in April 1946 but purged); Yoshida Shigeru (); Katayam Tetsu (-February 1948); Ashida Hitoshi; Yoshida Shigeru(October 1948-)

[26] Kenneth G. Henshall, *History of Japan: From Stone Age to Superpower* (New York: Palgrave Macmillan, 1999) p.140.

complete justice. Indeed many Asians believe that the Tribunal only focused on a few prominent scapegoats and that the Americans then adopted a much more forgiving approach to Japanese criminal behavior.

The omission to prosecute Japanese emperor Hirohito reinforced the above opinion. It is said that most Japanese were puzzled by such an omission.[27] It was MacArthur, "Japan's American emperor," who saved Japanese emperor Hirohito. Henshall comments that "it was to leave lingering distrust among many about an undesirable type of continuity with prewar Japan. This distrust was to remain to the present day, especially among Asian nations who suffered under Japanese rule but also among progressive-minded Japanese."[28]

No matter how much the U.S. interest in justice prior to 1948 was, that interest disappeared when the United States adopted the new recommendations from George Kennan who had concluded that Occupation reforms in Japan were "paving the way for a Communist takeover." Kennan recommended that the control over the Japanese government should be relaxed and that the emphasis of American policy towards Japan should shift from political reform to economic recovery. Almost overnight, the prosecution of war criminals was dropped, and rebuilding the Japanese economy became the highest priority of the Occupation.

Elsewhere in Asia, various countries were either recovering from the war or experiencing civil war. They were too preoccupied, and too weak, to form separate political coalitions for enforcing international justice. And the Japanese people themselves were not interested in enforcing justice on their own compatriots. Indeed, after the terrible fire bombings in Tokyo, and the atomic bombing of Hiroshima and Nagasaki, many Japanese saw themselves as victims not victimizers.

In sum, the woeful lack of political coalitions caused a failure of international justice in Asia a half century ago. The continuing backlash in contemporary Asia is evident. The Women's International Tribunal revisited the Tokyo trial in 2000 by investigating wartime sexual slavery and Emperor Hirohito's responsibility for the war.[29] According to a poll conducted by NHK in 2000, 29% of those aged 16 to 19, and 37% of those in their twenties, replied that "they can't tell" whether Japan waged a war of aggression in the 1930s and 1940s. That is a dramatic increase from a similar poll by the NHK in 1982 where only 10% of those in their teens, and 11% of those in their twenties, indicated that they "could not tell" whether Japan was an aggressor in the era of World War II.[30] At the same time, protests from Japan's Asian neighbors against Japan's revisionist attitude towards history have become more and more strident. For instance, one of the most recent large-scale protests broke out in China in April, 2005, as well as in Korea and other Asian states.

So, to restate my whole argument: The Asian "history issue," originating from failed international justice and, more deeply, arising from the absence of effective international and domestic political coalitions to enforce justice, has become a key impediment to Asian regional stability and regional integration.

The Nuremberg tribunal (1945-1949), by contrast, was a success in international justice, precisely because it was enforced by effective international political coalitions. Not only eleven

[27] Ibid., p.140.
[28] Ibid., p.141.
[29] Franziska Seraphim, *War Memory and Social Politics in Japan, 1945-2005* (Harvard East Asian Monographs 278, 2006) p.7.
[30] Kenneth G. Henshall, p.141.

war criminals were sentenced to death, fourteen German mobile killing units and seven doctors were also sentenced to death in addition to some others being found guilty.[31] This does not mean that Nuremberg is a success because more people were sentenced to death. The point is that the Nuremberg trials were much more carefully prosecuted. The Nuremberg tribunal was conducted over the course of five years, whereas the Tokyo trial lasted for only three. In addition to this, the SS's files alone filled six freight cars.[32] According to Robert Jackson, the chief U.S. counsel for the prosecution of Nazi war criminals, the documentary record he had assembled added up to over five million pages, as opposed to the Tokyo Tribunal's comparatively insignificant thirty thousand pages of evidence.[33] The deeper success of Nuremberg, however, is evident in its efficacy in securing human rights and in averting the atrocity of continued denial. So the "history issue" in Germany, although not completely absent, has been much less prominent than in Japan. And, as a result, most other European states are basically satisfied with Nuremberg, and progress towards a European Union has not stalled over the question of historical culpability in World War II.

Nuremberg proves not only that it was more successful as a legal prosecution than Tokyo, but also that it was undergirded by effective international political coalitions. In the wake of World War II, Germany was occupied by the United States, the Soviet Union, Britain and France. Collectively, these four states were all in agreement about enforcing international justice against the Nazi atrocities. Even the onset of the Cold War and the growing friction with the Soviet Union did not deter this pursuit of justice. All four states had suffered from Nazi Germany, and all four wanted justice. This lies in a stark contrast to the Tokyo tribunal in which the Asian states that were most victimized had no voice whatsoever in the trials. Of course the U.S. had important post-war alliances with France and Britain. Unlike its attitude towards the Tokyo tribunal, the U.S. did not want to weaken those alliances by ignoring German war criminals. And even as the Cold War escalated, the Soviets still held to the goal of enforcing Nuremberg partly to keep its own allies in Eastern Europe that had suffered under the Nazis. The Soviet Union held one million German war prisoners at the end of World War II[34], which made Soviet influence even more effective. All these factors make international justice a singular point of agreement among the European occupying powers. As a result, the Nuremberg Trial is regarded as "the most spectacular example of four-power unity" in 1945-1946.[35]

Domestically, from 1945 to 1949 Germany did not have a government. So like Japan, there were no effective domestic coalitions to enforce international justice in immediate post-war Germany. But unlike Japan, there was an enormously effective international coalition which made Nuremberg an exceptional success in the history of international justice. For the same reason, the Nazi textbooks were destroyed and a more honest history curriculum was established in German schools. And so, unlike Asia, Europe has almost no similar "history issue" today because it achieved successful international justice sixty years ago.

In summary, the root of the history issue between Japan and other Asian states is the legacy of failed international justice at the end of World War II due to the lack of effective international and domestic political coalitions to enforce international justice.

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[31] The Nuremberg Trials: Chronology.
http://www.law.umkc.edu/faculty/projects/ftrials/nuremberg/NurembergChronology.html
[32] SS refers to Schutzstaffel which means defense squadron, a Nazi paramilitary force.
http://en.wikipedia.org/wiki/Schutzstaffel
[33] Bass, *Stay the Hand of Vengeance*, 2000, p.302.
[34] William Carr, *A History of Germany: 1815-1990* (London: Edward Arnold, 1991), p.366.
[35] William Carr, *A History of Germany: 1815-1990* (London: Edward Arnold, 1991), p.367.

## CONCLUSION

This paper first points out that explanations pointing to nationalism and government manipulation as factors responsible for the history issue between Japan and other Asian states are unconvincing since they only focus on the persistence of the history issue but ignore the origin of this issue. This paper then argues that successful international justice depends on effective political coalitions to enforce it. Finally, this paper examines how failed international justice has led to the origin of the history issue between Japan and other Asian states.

Failed international justice has become an important part of history. What can people do today to resolve the problem posed by history? One positive step—conducting research on that period of history to establish truth by joint effort from concerned states—is said to have been made by Japan and South Korea and has been discussed between Japan and China.[36]

Another possible strategy, as Snyder and Vinjamuri suggest, may be that other Asian states declare amnesty for Japanese war criminals publicly and forgive them permanently. For such a strategy to work, it requires that Japan should accept such an amnesty, which means admitting Japan's role in World War II. But let me end with an irony that proves my underlying point. Such a "forgiveness strategy" is unlikely to work because, although it would represent justice, there are really no effective political coalitions to support it. The speech by Chinese President Hu Jintao at Waseda University cited at the beginning of this paper could be a positive step towards resolving the history issue between China and Japan by rebuilding an effective international political coalition for justice. The politicians in the 1940s and 1950s missed their chances, but today's politicians have their own opportunities.

***Jing CHEN*** *is a Ph.D. candidate in politics at Princeton University.*
陈婧为普林斯顿大学政治学系博士候选人。

[36] Source is from a talk with Mr. Yu Zhan, a senior member of Nippon Foundation, in the Summer of 2003 in Japan.

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# 马布巴尼的新书《新亚洲半球：全球实力不可避免地向东方转移》：东西方视角的巧妙结合

# Kishore Mahbubani's *The New Asian Hemisphere: The Irresistible Shift of Global Power to the East*: An Ingenious Combination of Eastern and Western Perspectives

陈 晋

(Jin CHEN)

马布巴尼的新书《新亚洲半球：全球实力不可避免地向东方转移》 (Public Affairs, New York, 2008)并不以它的思想深刻、观点新颖或资料丰富取胜，而是以它新加坡的独特视角吸引读者。它的语言简朴流畅；它的思想对西方盛行的主流观点形成挑战。只有深入东西方的工作生活，对两边的文化历史、观点态度了如指掌，但同时又保持思想的独立性才能写出这样的作品：既肯定西方对人类不可磨灭的贡献，又以西方人能理解的语言指出它的弊端。

马布巴尼成长在新加坡一个普通印度家庭，周围一直有很多穆斯林和中国朋友。1971 年他以哲学系第一名的成绩毕业于新加坡大学；在此之后的 23 年里，服务于新加坡外交部。他于 1976 年在加拿大获哲学硕士学位，1995 年获荣誉博士学位。他于 1991－92 年在哈佛大学国际关系中心进修一年；1993－98 年为新加坡外交部部长；2001 年成为新加坡驻联合国大使，2002 年成为联合国安理会主席，目前是新加坡国立大学李光耀公共政策学院院长。

马布巴尼直言不讳地肯定西方在科学技术、思想文化方面对全人类的巨大贡献。尤其是西方的一些著名大学在教育学生，培养人才时没有狭隘的国家主义，而是鼓励学生不带任何偏见的质疑、检验、挑战一切约定俗成(free and open inquiry, and challenge convention), 为全人类拓展知识的前沿，创造积累更多的智慧。“这样的大学应该被认定为全人类的财富。” 这样的称赞与他所受的英文殖民教育息息相关。也正是这样的教育使他挑战西方在国际关系方面的一些主流观点。

他也承认美国对世界的贡献在所有国家中首屈一指。美国是二次大战后以规则为基础的（rule-based）国际秩序的主要制订者。这包括联合国（UN）体系和布雷顿经济贸易体系（世界银行，国际货币基金组织(IMF) 和世界贸易组织（WTO））。“美国用它的军事实力维持 1945 年后的国际秩序，这才使得美国和其他国家，尤其是东亚国家，（有一个和平的环境）取得经济增长和繁荣。”（第 81 页）“美国在使用其军事力量时非常谨慎，其主要目的是确保所有的国家尊重国际规则。”“美国海军的作用是国际海域安全畅通的真正原因，这才使得国际贸易有前所未的蓬勃发展。”(第 105 页)。“美国比任何其他西方国家更早，更有效地把‘现代化’的理念带到世界的各国角落，使‘向现代化进军’（March to Modernity）和 ‘美国之梦’(American Dream) 深入人心。”

马布巴尼称赞西方某些方面的目的是显示他在判断国际关系发展趋势方面一分为二、不偏不倚。 那么他在哪些方面的观点带有浓厚的亚洲色彩呢？首先，他指责西方国家对国际组织、国际经济命脉、全球传媒的控制和影响。美国在联合国安理会有举足轻重的作用和不可疑视的地位。多年从事外交工作的马布巴尼有不胜枚举的例子。西方国家在世界银行和 IMF 没有明文规定，但享有约定俗成的领衔特权 － 世行主席永远是美国人；IMF 永远是一个欧盟国家的人。

“西方国家不能想象没有西方主导世界，世界有可能会变得更好”，所以他们下意识地觉得他们有道义上的职责去维护西方文明和西方主导世界的主动权。即使那些职业道德最强的西方媒体也会在不知不觉中强化这些潜意识。例如，他们对 G7 年会的大幅报导给人们留下一种假象 — 这七个国家领导着世界。而事实却是世界的重心已经随着中国和印度的迅猛发展向东方转移，这七个国家在没有新兴国家参与的情况下左右不了国际大事。西方媒体的一个常用词是“国际社会”。马布巴尼曾经问一位西方主流媒体负责人，“国际社会是谁？谁组成了国际社会？”“思索片刻之后，他承认他所指的几乎全部是那些生活在西方社会的人。那么他们所说的‘国际社会’更像自己人内部产生的私人俱乐部，而不是真正的国际社会。”（第 130 页）

马布巴尼举例说明西方国家对世界经济命脉的控制和影响。世界最大的十家银行和投资银行都是美国的，欧洲的和日本的。这些企业的国家属性重要吗？他们的目标难道不是服务客户，为其股票持有者增值吗？马布巴尼说，在正常情况下，国家属性并不重要，但在特出情况下，这些企业就不得不对其直接监管机构和政府负责。例如，在 1997－98 年的亚洲金融危机过程中，那些在韩国投资的主要银行都接到了美国财政部的电话，“建议”他们不要从韩国撤资，因为韩国对美国来说有战略利益。而泰国对美国来说没有那样的战略意义，所以泰国没有韩国那样幸运。（第 120 页）

日本被马布巴尼单独立项，说明日本的经济实力被用于维护西方国家的利益。因为日本力图“脱亚入欧”，不惜一切代价加入西方的各种俱乐部： OECD、三边委员会(the Trilateral Commission) 和 G7 等等， 日本偿付了比其他会员国家更多的“会费”。其中，日本以 G7 成员国最为骄傲，但这也给日本带来不可避免的义务。在第一次海湾战争中，日本并不情愿参与，但却成为最大的买单国家：付了总费用 610 亿美元的 140 亿， 而美国自己只付了 70 亿，小于总费用的百分之十二。日本的企业为了在西方国家树立良好形象，对西方主要国家各种著名大学、博物馆、思想库和其他文化事业大量捐款。 日本政府也不甘落后，为与西方建立关系、增进感情大力投资。

马布巴尼最具亚洲（特别是新加坡）色彩的观点是对西方民主的看法和对“择优而士”（ruthless meritocracy）的不遗余力的推崇。他强调西方的民主体系已经到了完全没有能力解决现今的棘手问题的程度。竞选者为了迎合选民的胃口，不能提出正确的目标，做出正确的决定。在位的政治家只能为自己选区的利益做出狭隘的选择。这就是为什么欧盟把大量的时间和精力花在内部争斗和近期矛盾上，而不能着眼于欧盟整体的长远利益。这也是为什么没有任何美国政客提倡增加汽油税，即使这是解决能源问题最合理、最有效、最迅速的途径。美国总统经常把自己的朋友安插为在一些国家的美国大使，使得美国外交部不能“择优而士”，大大降低了外交官的士气。 这些都是民主体制的弊端。

马布巴尼批判西方认为“民主是放之四海的真理”的想法，认为民主并不是对所有国家在所有阶段都适合的。他把戈尔巴乔夫与邓小平对比，告诉西方读者：戈尔巴乔夫在西方被认为是英雄，但在东方却被认为是傻瓜 — 买了西方国家的帐，却没有得到任何好处，丧失了俄国帝国，把俄国人民推入经济萎缩。而邓小平却恰恰相反，是务实派政治精英的最权威的代表人物。他主张安全稳定是发展经济的先决条件，而经济繁荣又是提高人民素质，政治民主的先决条件。所以任何政府在“89 风波”的情况下都会采取军事行动，只是程度会有所不同而已。他取笑，“让这个世界按民主体制运转的这一想法的本身就是不民主的，因为西方国家的人口只占世界总人口的一小部分。”他指责美国是“在国内最民主的，最守法的国家；但在国际上却是最不民主的，最不守法的国家。”

马布巴尼称赞邓小平的“28 字方针”：冷静观察，沉着应对，稳住阵脚，韬光养晦，善于守拙，决不当头，有所作为； 和这一方针对中国外交政策的积极而深远的影响。他指出中国与东盟国家日益密切的往来带动了这些国家的经济发展，使得那些企图孤立中国的西方国家不能有效的孤立中国。 他肯定中国在非洲投资对非洲经济发展的促进作用，中国经济的起飞给非洲人们带来希望，“华盛顿共识”对非洲来说不再是唯一的选择。他指责西方媒体对中国的曲解和谴责。

马布巴尼的非西方色彩还表现在他对气候变化的态度和对中国和印度的比较。在气候变化问题上，他指出“总量（stock）”和“增量 (flow)”的区别。虽然新兴国家的经济崛起增加了温室气体的增量，但是温室气体的总量主要是由发达国家在工业革命以后迅速而

全面的现代化造成的。所以任何公正的减缓温室气体排放的公式都要把各个国家对温室气体的总量的份额考虑进去。

虽然马布巴尼是出生在新加坡的印度人，但他在中印比较方面与很多西方学者的视角和侧重有所不同。其实，中国和印度各自的优势和劣势早有大量的文章，做了细致入微的阐述。马布巴尼的特点在于强调中国的优点和改革开放以来长足的进步，最明显的表现在对中印司法体制的比较。西方学者大多强调英国殖民者留给印度的司法独立性，而中国的司法体系一直与执政党有千丝万缕的关系。马布巴尼却强调印度司法的拖延："对实施正义的拖延就是对正义的拒绝（ Justice delayed is justice denied）。"与此同时，他强调中国司法体系二十多年来的对保护人权和财产权方面的巨大进步。

那么，马布巴尼的理想世界是什么样的呢？他建议所有的人都读一读联合国的章程 － 一本可以装在口袋里的小册子，包含着许多西方政治智慧的精华： 一个世界的精神（one-world spirit）和全民参与（universality of representation）的理念。他认为以五个二战胜利国组成的安理会已不能满足世界发展的需要，但没有详细指出在错综复杂的国际关系里联合国应如何改革。

他强调管理世界秩序没有必要发明新的理念和组织框架，而是要依靠那些经得起实践检验的原则来管理世界秩序，处理国际关系。这些原则包括：民主制度，市场经济，法制（rule of law），公平与公正的社会制度，"择优而士"，发展合作和形成合作伙伴，屏弃意识形态的分歧和发扬务实精神。

他相信各个文化和宗教区域可以和平共处，共同繁荣昌盛。 他以印度作为这种东西结合、和平共处的典范。他倡议西方国家以他们包容的思想哲学、宽广的胸怀，容纳并支持东方的崛起，而不是计较一时的经济得失，阻碍东方的振兴和发展。他希望中国不再像历史上的中国那样闭关自守，而是像大都市那样有容乃大，承担起引领世界的责任。他也理解中国在务实的外交方针的指导下，不愿轻易挑战任何大国。

马布巴尼的理想世界带有浓厚的新加坡烙印。读过李光耀自传的人不难发现二者思想体系的共同之处：批判性地看待民主，极其重视政治稳定和经济发展，肯定市场经济对社会发展、解放思想的巨大作用，不遗余力地推崇"择优而士"以及合作与务实精神；不相信任何教条的意识形态，而相信不同的文化、种族和信仰可以和平共处、共同繁荣。所有这一切在李光耀领导下的"城市国家"新加坡得以实现。但真正的"世界"与"城市国家"有本质上和数量上的巨大差别。

在阐述世界的重心"不可避免地"向东方转移时，马布巴尼忽略了亚洲很多新兴国家与新加坡一个重要差别。新加坡在李光耀推行的"择优而士"的影响下，政府官员大多廉洁奉公，社会基本保持公正公平。而亚洲一些国家官僚资本主义、裙带资本主义、行贿受贿盛行，以至于公平公正的社会关系凤毛麟角，普遍的腐败才是家常便饭。

如何跨越这种差别还是一个巨大的问号。 马布巴尼在否定世界被"西化"的同时，不知不觉地套用了"新加坡模式"，并努力"新加坡化"这个世界。读者在决定马布巴尼的结论 － 世界的重心不可避免地向东方转移 － 是否令人信服时，要清醒地意识到亚洲与新加坡的不同，而且还要扪心自问："新加坡化"是世界人民共同的理想吗？或许一个世界范围的民意测验才能符合"民主"的要求。

陈晋为哈佛大学东亚区域研究硕士，现为《财经》杂志驻波士顿记者。

***Jin CHEN*** *received her M.A. in East Asian Studies from Harvard University and is now a correspondent for Cai Jing magazine in Boston.*

# Developing Commercial Health Insurance in China: The CIRC-NAIC Joint Seminar on Health Insurance

# 在中国发展商业医疗保险：中国保监会与美国国家保险专员协会关于医疗保险的联合讨论会

John MORRISON & Karen EGGLESTON

In late 2006, the Chinese government appointed a high-level inter-ministerial commission—composed of fourteen government agencies, co-chaired by the National Development and Reform Commission and the Ministry of Health—to develop a blueprint for China's healthcare system. One party to that process, China's Insurance Regulatory Commission (CIRC), has developed a program of cooperation with its US counterpart, the National Association of Insurance Commissioners (NAIC). To provide input to policymaking, representatives of CIRC, NAIC, private insurers in China and the US, as well as Chinese and American scholars of health insurance gathered in Yichang, Hubei, PRC, on 18-19 June 2007, for a joint seminar on the role of commercial health insurance in the Chinese and US healthcare systems.

The first section of this field report provides a brief description of China's health care reforms in the past decades. The second section highlights the progress and challenges to date in developing commercial health insurance in China, and the final section summarizes the recommendations that the NAIC Commissioners provided to CIRC in 2007 at this critical juncture in China's health policy reforms.

## BACKGROUND ON CHINA'S HEALTH CARE SYSTEM REFORMS

During China's socioeconomic transition from a centrally planned to a market-based economy, the health sector underwent controversial changes: reduced government financing, collapse of risk pooling for much of the population, and increasing pressures on government-run healthcare facilities to generate revenues from user fees by over-prescribing profitable services like drugs and high tech diagnostics. Meanwhile, China's once outstanding population health indicators – with life expectancy above that predicted for its per capita income in 1980 -- stagnated at the national level, with increasing disparities between urban and rural, coastal and inland, richer and poorer communities. During the reform era (1980 to today), two-thirds to three-quarters of the Chinese population have lacked any health insurance coverage, with especially high rates of uninsured in rural areas. High out-of-pocket spending and over-prescribing led to barriers to access and high financial burdens, especially for poor patients. A 2005 report by a government agency declared that China's health care reforms had been "basically a failure." Observers both outside and inside China have sometimes voiced surprise that commercial insurance did not fill the void of collapsed community financing (see e.g. Liu and Rao). More recently, the Chinese government has launched social insurance programs—the New Cooperative

Medical Schemes (NCMS) for rural residents and new insurance schemes for the urban uninsured—albeit with continued high patient cost sharing.[44]

What role commercial insurance will play in supporting and supplementing these new social insurance programs, as well as in the existing Basic Medical Insurance (BMI) programs for urban employees, remains unclear. Controversy about the role of commercial insurance in China is at the forefront of the discussions about how China will achieve its ambitious goal of universal basic coverage.

This report diverges from some of the proposals within China for a government-led health care system that excludes commercial health insurance entirely. But the recommendations are consistent with much of the debate, which differs in views about the extent to which commercial insurance can and should complement social insurance risk pooling for basic health services. Moreover, the recommendations include points that go beyond the role of commercial health insurance to touch upon broader regulatory and population health objectives, such as promoting wellness, further taxing tobacco, and fighting fraud to achieve equitable targeting of public subsidies.

The NAIC report to the CIRC reflects the views of the US insurance commissioners and others with experience regulating a vibrant commercial health insurance market. It does not by any means suggest that China should replicate the US system. Rather, the report suggests that experience from the US can be tailored to help China fill its own goal of an equitable, efficient system of coverage for all.

## THE ROLE OF COMMERCIAL HEALTH INSURANCE IN CHINA

The joint seminar on health insurance opened with welcoming speeches by Meng Zhaoyi, Director General, International Department, CIRC, and Walter Bell, Chairman of the NAIC.

Director Meng first welcomed everyone and expressed anticipation of a rewarding exchange of views, especially at this crucial time for China’s healthcare system development. He discussed international experience with commercial health insurance as part of healthcare system development, stating that commercial insurance should help with three challenges: achieving universal coverage, spurring high quality programs such as health maintenance, and complementing other components of the healthcare system to serve diverse social needs. Looking at China’s health system reforms through the lens of commercial insurance, he said health system reforms are high on the policy agenda in China, and the complex issues boil down to how to guarantee equity and efficiency. A 2006 report that China’s healthcare reforms were basically a failure was inspired by the manifest problems of inequalities and high costs; many important groups, including most rural residents, are not insured, leading to vicious cycles of illness-induced poverty. But international experience shows that commercial insurance is an effective supplement for healthcare coverage, raising efficiency and counteracting rigidities. Finding the appropriate functions of government and market is a challenge. Director Meng expressed a desire to promote US-China exchanges and together encourage appropriate development of commercial health insurance in China.

[44]For recent overviews of China’s health sector reforms, see Ma, Lu, and Quan (2008) and Wagstaff and Lindelow (2008).

Walter Bell, Chairman of the NAIC, expressed appreciation for CIRC's organizing the forum, at this special location of Yichang, the Three Gorges Dam. He briefly described NAIC-CIRC cooperation since the 2002 Memorandum of Understanding, noting that the insurance industry will play a role in "building a harmonious society" in China (a key goal articulated by China's top leaders). Chairman Bell then provided a brief preview of the presentations by US participants, emphasizing that the seminar was an opportunity for us all to learn together.

The remainder of the first day of the joint seminar focused on insurance industry development and national policy in China and the US.

In "Health Insurance Industry in China," Fang Li, Deputy Director General of the Life Insurance Department of CIRC, discussed developing commercial health insurance as an important way for the insurance industry to contribute to building a socialist harmonious society in China. She noted that although in the US the industry evolved somewhat autonomously, with regulation co-evolving with the industry, in China, development is government-led, so it is important for government to show support for a sector or industry. She reviewed some international experience with commercial insurance in France, Canada, Holland, and claims processing for US Medicare and Medicaid, emphasizing the positive role that it plays. In China, health insurance industry development can contribute to building a strong market-based economy and developing rural areas, including supporting the New Cooperative Medical System (NCMS) health insurance system expanding in China. Commercial health insurance has expanded at an annual rate of 32% in recent years, with total premium revenues over 37 billion RMB Yuan; CIRC has supported specialization, with products including disease insurance, comprehensive health insurance, long term care insurance, and disability insurance. Commercial insurers have played a role in supporting basic social insurance programs, such as by providing administrative support for some local NCMS programs as well as for some "medicaid" programs for the poor. Private insurers also play a role in providing supplementary insurance to urban social protection schemes.

Looking forward, Director Li noted that there is a great need for more research, more specialization, and improved regulation to protect the interests of the insured. To support the broader health policy reform process in China, there is need for an official definition of commercial insurers' role, and specific policies such as having urban social insurers leave the market for supplementary insurance to commercial insurers, and considering tax subsidies for individual and firm purchase of health insurance.

The next presentation, entitled "Health Insurance Development in Xiamen, Fujian Province, China," was given by Xue Jiang, Deputy Director General, Xiamen Branch, CIRC. Since 1997, Xiamen City has developed a system of supplementary commercial insurance coverage for 100% of registered urban employees, covering expenses above the maximum covered by social insurance (53,000 RMB) up to a ceiling of 150,000 RMB per patient per year, with a 10% co-insurance rate. The premium was 52.8 RMB in 2007, with 16.8 RMB of the premium paid by Xiamen's social insurance bureau.

Xiamen's system progressed through several distinct development stages. From 1997 through 2002, they used fixed-term contracting out for supplementary insurance, which proved to be not flexible enough as circumstances changed. Then for three years (2003-2005) they tried an administrative services only model, but government complained that insurers were no longer bearing any risk so they had lost their insurance function. Since 2006, Xiamen has used a model of third party administration with a risk-bearing band (if the medical loss ratio is above or below a specified threshold). Director Xue gave examples of how funds are administered, their claims auditing processes and steps toward utilization review, etc. He closed by noting that the industry will develop IT and play an important role in expanding coverage. Xiamen has passed laws to expand health insurance coverage to all residents, including the elderly and children, to be the pioneer locality in China to achieve universal coverage.

The joint seminar then turned to the US experience. Kim Holland, Commissioner from Oklahoma, presented “Commercial health insurance in the US.” Regulation of insurance is the joint responsibility of federal and state governments. Insurance coverage includes not only commercial insurance policies, but also large social insurance programs such as Medicare, Medicaid, and other safety nets. Salient problems include high spending and millions uninsured.

In the discussion period, NAIC representatives asked for a general description of China’s healthcare delivery system: is there a shortage of providers? The Chinese representatives responded that although there are shortages in some rural areas, overall in China it is more an issue of affordability rather than availability. There may be a possibility of using something like community health centers in the US, which charge based on a sliding scale to help low income patients.

Participants also discussed why commercial insurance in China largely focuses on dread diseases rather than comprehensive coverage, and how portable coverage is in the US. And there was an extensive discussion of the relationship between tax subsidies and cost growth. The CIRC representatives said that Professor William Hsiao of Harvard School of Public Health, well known and respected in China for his expertise on health economics in general and China’s system in particular, had strongly recommended against tax exemptions for firms to offer health insurance, saying this contributed to rapid and wasteful spending increases in the US. Commissioner Oxendine said that he felt tax incentives were critical for expansion of insurance at an earlier period, but the US made a “big mistake” to give subsidies only to firms (employers) and not to individuals (employees). Many participants noted that cost growth is complicated and a global challenge. The US now is seeking checks and balances, partially with more consumer-directed plans and a health promotion focus (e.g. no soft drinks in schools, incentives for healthier lifestyles).

A representative of Taiping Life Insurance (Tan Weimin) asked about marketing costs in the US, remarking that they could be as high as 30-40% of premium in China “because the industry is so competitive” (i.e., many companies competing for the single intermediary who controls a firm’s business). Dirk Visser and others said that in US, marketing costs can be as low as 1%, for small groups can range from 5-12%, and for the individual market at most 20-30% of premium. China needs full disclosure to facilitate competition, especially if these high commissions recur annually, which would be “unheard of” elsewhere; perhaps it would help to focus on multi-year renewals.

Finally, participants discussed China’s healthcare system development and balancing cultural traditions (such as Traditional Chinese Medicine) during the reforms.

The afternoon session opened with Commissioner John Oxendine of Georgia speaking on “Health insurance development in the states.” Commissioner Oxendine spoke about managed care in the US and patient reaction against it, touching both upon the low patient co-payments (so patients wanted more) and the contracting environment (managed care only works when there is a surplus of providers to support selective contracting). He spoke about the need for tax exemptions to be “across the board” rather than only for employers, as in the US, which distorts the market. Commissioner Oxendine also discussed recent initiatives in telemedicine and teleradiology (especially for prenatal care), including in his own state of Georgia. Finally the Commissioner discussed trends in consumer-driven health insurance products in the US.

The day concluded with a series of academic presentations on research and international perspectives. First, Professor Zhu Minglai of Nankai University presented "Discussion on trends of health insurance development in China." Professor Zhu provided a brief overview of health insurance coverage in China, followed by a discussion of the role of commercial health insurance internationally and currently in China. Professor Zhu conveyed his belief that the international evidence strongly supports an active role for commercial insurance and the use of tax subsidies (such as US "tax expenditures") as a necessary stimulus for the development of commercial health insurance.

Next, Karen Eggleston of Stanford University (formerly UCLA) presented "Global perspective on health insurance reforms: Public/Private Mix." Professor Eggleston discussed international experience, primarily among OECD countries, in the mix of public and private insurance and its regulation, focusing on incentives for competition and the associated problem of risk selection ("cherry picking") and how this problem is regulated in a variety of European and Asian healthcare systems.

Finally, Professor Wei Hualin of Wuhan University presented "Discussion on trends of health insurance development in China." Professor Wei discussed similarities and differences between the US and China with regard to the mix of social and private insurance, emphasizing that while the US development was market-led, China's has been government-led. Both systems face challenges in cost control and achieving universal coverage. One cannot blame China's system for the cost increases that are a global phenomenon. Moreover, many countries began their healthcare coverage systems with social programs to prevent illness-induced poverty, and only later began to turn over parts of the system to the market. The social insurance systems in the US focus on vulnerable groups left out from commercial insurance – the elderly and poor – whereas in China it is just the opposite; social insurance programs to date have covered the urban employed and left most of the population -- especially rural residents, urban dependents, and the poor -- without insurance. He touched upon the managed care backlash in the US and the current policy debates in China, concluding that China must forge its own path and cannot simply imitate the systems developed elsewhere.

Day II of the seminar presented views from industry, beginning with a panel discussion led by John Morrison, Commissioner from Montana, who discussed the "Insure Montana" program. This innovative state program in Montana creates a purchasing pool for previously uninsured small businesses that receive premium assistance payments for employees, indexed to income, and a fixed premium incentive payment to employers. Payments are drawn from a special revenue account funded by a tobacco tax. It also offers tax credits to other small businesses that are previously insured. Insure Montana now makes affordable health insurance available to over 10,000 Montanans after just two years in operation.

Mr. Tan Qijian of PICC Health gave a presentation entitled "The Development Characteristics and Trends in China's Commercial Health Insurance Industry." He spoke of the contrast between the structures of the US and Chinese health coverage system, where in China the official place for commercial insurance within the system remains unclear. Although some of the social insurance programs, such as the new and expanding rural New Cooperative medical Scheme (NCMS) use some commercial insurance for administration, there remains wide variation across the country in the acceptance of commercial insurance as a supplement to social insurance programs. He discussed the tax and regulatory context, including the 2002 and 2006 decisions that have laid the groundwork for commercial insurance playing a role in China's health sector. While the US market is dispersed and competitive, China's is relatively concentrated. Insurers generally do not provide comprehensive coverage because they (1) cannot control providers (manage care) and therefore spending; (2) lack expertise and experience with strategic purchasing; and (3) have a different perspective because they developed from life insurance companies. In general purchasers are weak vis-à-vis suppliers, especially large hospitals in urban China, with regional variation. Mr. Tan emphasized the problem of medical providers deriving a large share of their revenue from dispensing medicines. He also spoke about customer relation management, business strategy risks, the need for technological and human resource development, and implementation challenges.

Next, Alfred J. Fortin, Ph.D., of the Blue Cross Blue Shield Association, provided an overview of the Blue Cross Blue Shield system in the United States. He noted that it is the largest health insurance system in the U.S.—covering 99 million lives and rating number one in brand recognition. Dr. Fortin then reviewed in some detail the BCBS health insurance programs for the U.S. federal and state governments such as Medicare and Medicaid. BCBS plans work closely with hospitals and doctors, and operate many consumer and quality programs across the nation. Finally, Dr. Fortin emphasized that BCBS has been a strong promoter of ethics in managed health care.

Dirk Visser, CEO of Allegiance Benefit Plan Management, Inc., next presented a talk entitled "Third Party Administration: Overview and Market Characteristics." A third party administrator (TPA) is an independent firm contracted by an employer to provide administrative services related to their employee benefit plan(s). Mr. Visser discussed TPA services, ranging from plan design and compliance to administration of enrollment and billing and network management. Types of plan services include not only health benefits (dental, vision, disability as well as medical), but also qualified reimbursement accounts, executive compensation packages, retirement plans, and workers compensation. There are approximately 3500 TPAs in the US, ranging from very small to large and/or highly specialized firms, functioning under different state licensing requirements. Mr. Visser noted that China should avoid this confusing regulatory scene in the US by having standardization of such regulation across provinces and regions.

Another voice from industry came from Brett Grant of AFLAC. The presentation described Aflac, which insures approximately 40 million people in the US and Japan, and their supplemental health policies designed to supplement comprehensive private or public medical insurance to cover patient out-of-pocket expenses as well as travel and lost wages. Coverage can be disease-specific or setting-specific (e.g., hospital indemnity, long term care), with benefits based on fixed amounts, not actual charges. Policies are issued to individuals, usually on a lifetime level premium basis; underwriting needs to be simple but sufficient to avoid adverse selection. He responded to a Chinese representative's question about payments: Aflac's schedule of payments is matched to the severity of the medical condition; the cash benefit is a fixed amount that the insured can use on many things, such as travel associated with receiving medical care.

Finally, Wendy Huang of United Family Hospitals and Clinics discussed a provider-side view of China's changing health sector. United Family Hospitals and Clinics provide services in Beijing and Shanghai, with discussion about expanding into Xiamen and Guangzhou. They obtained JCI accreditation in 2005 – the first provider in China to do so. They primarily serve the expatriate community, but with a growing segment of Chinese nationals. They provide service teams in multiple languages as part of their targeting strategy for multinationals, who are increasingly seeking high-end benefits for recruitment and retention for their executive teams, both expatriate and Chinese. Group discussion touched upon the key question in China of disease-based versus comprehensive insurance. Ms. Huang made the point that the healthcare provider is key to creating a win-win situation for commercial insurance. In a survey they conducted in Beijing, they found that most patients listed high quality first, and price considerations later.

In the discussion period, Commissioner Holland reiterated the view of US States as “laboratories” for health policy initiatives; China is also decentralized with experimentation by province/region, so there appears to be considerable potential for learning from each other and between states and regions.

Several participants discussed the plight of rural farmers. In China, they are generally of low income, and local government resources are constrained in meeting local farmers’ needs. In the US there have been diverse experiences, including state farmers’ federations, programs to subsidize premiums for low income self-employed (such as farmers) in several states, and state-supported risk pools; in some cases farmers have a higher insured rate than the general population. The political economy of coverage differs.

Finally, several participants emphasized the new approach in the US and elsewhere to quality of medical care outcomes and a value-based approach. This includes building transparency about price and quality outcomes into the system, as well as empowering consumers through information to make better decisions about their health care and provider choices.

In the closing remarks, the NAIC Chairman noted the need for expanding health insurance coverage, controlling costs, promoting consumer health education, and enforcing careful regulation to “provide sanity to the market”. For China, the new regulations will be the key. Health insurance issues have so many facets, there is no silver bullet, and the challenge of coordination is formidable.

Director Meng of CIRC noted that although 1.5 days is short, we enjoyed broad discussions and highlighted many challenges, especially in China’s initial stages of developing commercial health insurance. He expressed appreciation for the recommendations from NAIC experience, and special thanks to the representatives from industry in the US and China, as well as other participants and local hosts.

## II. RECOMMENDATIONS

The following are recommendations from NAIC to CIRC based on U.S. experience and the discussions at Yichang. The NAIC appreciates the chance to participate in China’s planning process. The U.S. has spent a tremendous amount of time and money studying needed changes to the health insurance and health care delivery systems in our own country, but has been unable to make many changes because of entrenched interests. China’s opportunity to create a new system at this time in history is both remarkable and exciting.

China has many interesting and promising innovations occurring in health care delivery and payment schemes across the country. The suggestions below are focused on approaches that may enhance the climate for commercial health insurance growth in China.

In addition to providing these recommendations, the NAIC has asked several commercial insurers to offer their thoughts about what steps might next be taken in China to encourage the development of a commercial insurance market. The papers these insurers prepare will be submitted when they are received by NAIC.

Presentations at the Yichang meeting made clear that China hopes commercial insurance can contribute to the goal of developing a "harmonious society." Health care access and financial protection from the high cost of care are certainly important to social harmony in any country. The U.S. has its own challenges in this area. It is also clear that Chinese leaders are especially concerned about providing health insurance coverage to rural residents as part of the larger effort to narrow economic differences between urban and rural areas.

Lack of health insurance not only endangers individual and public health, but also productivity and related economic progress. Because the uninsured rate is high and the economy is developing, a joint effort among public and private players will be necessary to achieve a broad expansion of coverage.

It is likely that commercial health insurers will first be drawn to areas of China that are enjoying greater prosperity. The industry will probably gain its foothold in urban areas, for several reasons. First, consumers with higher incomes will be able to pay meaningful premiums for meaningful coverage. Second, covering employees at larger workplaces is administratively easier for companies. Third, companies will likely be more comfortable with medical care delivery systems in urban areas. Once the foothold for commercial health insurance is established, companies over time will increasingly branch out into rural areas. Standardization of rural health care quality and subsidies for rural residents and businesses seeking to purchase health insurance will accelerate this growth.

The NAIC hopes that recommendations discussed in this paper will be useful to CIRC in its great effort to develop and expand commercial health insurance in all parts of China.

**1. Develop Premium Assistance/Tax Subsidies/Purchasing Pools**

*A. Rationale.* Many uninsured are able to pay some premium, but cannot afford the market price for health insurance. Premium assistance can bridge the gap, allowing an uninsured business or individual to pay as much as they can afford toward coverage, reducing the public expense of coverage accordingly. Tax subsidies serve the same purpose. Purchasing pools allow small businesses to spread risk and increase bargaining power when buying health insurance.

*B. U.S. Experience.* Consider the example of the Insure Montana program. This program covers thousands of small business employees and their family members using a purchasing pool and premium subsidies. Businesses with 2-9 employees are eligible. The pool will soon be community rated. Employers receive a fixed premium incentive payment and employees receive a variable premium assistance payment, indexed to income. Insure Montana has become a prototype. Maryland is preparing Insure Maryland presently and Oklahoma recently adopted a similar program. This model has the advantage of covering more people with less cost to the state. For example, under Insure Montana, it costs the state $1350 to cover the child of an employee for a year. Under the Children's Health Insurance Program, which is an entirely state funded public program, the same coverage costs $1750 per year. Although the private insurer that underwrites the Insure Montana program has a 15-20% administrative margin, the contribution by the employer and employee make the coverage in that program cheaper for the state.

*C. Chinese Application.* Deputy Director Fang Li noted her interest in the premium subsidy approach and Xiamen Deputy Director Xue Jiang discussed the successful use of premium assistance in that municipality. Such subsidies can help consumers purchase comprehensive coverage, catastrophic coverage or supplemental coverage. They can be used in urban or rural areas, as they have been for the New Cooperative Medical Scheme (NCMS) in China. They have many applications. The key feature is that the consumer and the government – and in the US and China's urban employee insurance, the consumer's employer--all contribute to paying the cost of coverage. This allows commercial insurers to enter markets in which consumers could not otherwise afford their products. One significant challenge is indexing premium assistance to income when the administrative and information systems for such indexing are lacking for the rural majority in China.

**2. Use Third Party Administration**

*A. Rationale.* When public or private employers directly underwrite the health coverage for their employees, third party administrators can provide a host of cost saving services. TPAs can assemble networks of providers who provide discounted services and they can design plans, deal with regulators, enroll and bill employees, evaluate and pay claims, and review coverage and medical need issues. TPAs can also administer health savings accounts as well as retirement and workers compensations programs.

*B. U.S. Experience.* TPA services are performed both by health insurance companies and by independent TPAs. There are 3500 TPAs in the U.S. Over 50% of the non-federal employees receiving employee benefits in the U.S. are enrolled in self funded plans that are, to some degree, administered by TPAs. There are almost no self funded employer plans in the U.S. that do not use a TPA. Commercial insurers provide vital administrative services for Medicare and Medicaid programs.

*C. Chinese Application.* In some areas, commercial insurers are apparently providing TPA services to local authorities for the administration of social insurance. Perhaps the most promising area for promoting an active role of commercial insurers in China is in providing TPA services to social insurance programs in both urban and rural areas. Overall China may not wish to promote an employment-based coverage system, which reduces portability and leaves out the most vulnerable groups. However, employers should nevertheless be encouraged to offer supplementary insurance, as noted below, and many should consider expanded use of TPAs to do so.

**3. Encourage Supplemental Benefits**

*A. Rationale.* When public or employer-sponsored plans can only provide a basic coverage, supplemental policies can allow those with sufficient means to obtain coverage for additional services or to pay deductibles and co-pays of the basic plan.

*B. U.S. Experience.* The U.S. has a variety of supplemental benefit products. Medicare supplemental insurance (regulated Medigap insurance) covers many of the expenses that the Medicare program does not. Medicare part D plans provide prescription drug coverage. Companies like AFLAC, which was represented at the Yichang meeting, supplement accident and sickness coverage with lost wages and out of pocket expense protection.

*C. Chinese Application.* Supplemental insurers can provide insurance coverage in markets where consumers can afford more than the basic minimum level of coverage. Supplemental coverage would be especially well suited to urban areas where the BMI coverage is not sufficient and employees have the means to purchase additional coverage. Hopefully, supplemental insurance will be available to complement NCMS, as well. Clear regulation—as in the US Medigap program or many European countries--can be used to avoid problems such as risk selection (serving only the most profitable consumers) through selective coverage in supplementary insurance.

**4. Consider High Risk Health Insurance Pools**

*A. Rationale.* In a competitive insurance market, no company can afford to shoulder more than its share of chronically ill or high risk enrollees, so it can be very difficult for high risk consumers to obtain coverage. High risk pools accept those enrollees whose health conditions make them unacceptable to any one commercial insurer, spreading the risk across the market.

*B. U.S. Experience.* In the U.S. there are two models for dealing with this problem. Guaranteed issue jurisdictions require companies to accept all applicants. High risk pool states allow companies to reject high risk applicants who then are placed in a state supervised pool that is funded by all health insurers in the market, based on market share. Commercial insurers generally prefer this approach.

*C. Chinese application.* Establishing high risk pools will not only ensure that Chinese people with chronic health conditions have a coverage option, but will also signal to commercial health insurers that no one company will be required to carry risk that is unsustainable. This may be an important option to develop, alongside risk adjustment for premium and provider payment systems, to ensure a "fair playing field" among insurers competing for any given market (e.g., regional supplementary insurance for BMI or NCMS).

**5. Reduce Marketing Costs**

*A. Rationale.* An insufficiently competitive insurance market can lead to high agent/producer commissions that inflate the cost of coverage. Lower commissions and marketing costs mean lower premiums.

*B. U.S. experience.* In the U.S., health insurance marketing costs can be as low as 1% of the premium, and in the small group market range from 5-12%. The highest marketing costs are in the individual market, where they can be 20-30%. Producer commissions are not directly regulated in the U.S., but competition in the mature market keeps marketing costs relatively low.

*C. Chinese application.* Taiping Life reported in the Yichang meeting that its marketing costs are 30-40% for most of its health coverage. These rates are excessive. CIRC should promote competition and may consider limiting the commissions that can be charged by producers until the market is more competitive.

**4. Clarify Regulatory Authority**

*A. Rationale.* Commercial health insurers, like all businesses, can only risk capital when they understand the legal landscape. That includes a clear picture of who regulates them and what the regulator expects of them.

*B. U.S. Experience.* Commercial health insurance in the U.S. is regulated by the state insurance departments. Self-funded, employer-sponsored plans are regulated by the U.S. Department of Labor. Although some fraudulent insurance schemes (discussed below) have tried to hide in the cracks between these two regulators, companies generally know who their regulators are and the rules they must follow. Insurers do complain that the multi-state system of regulation in the U.S. is confusing and inefficient and the NAIC facilitates efforts to achieve more uniformity and reciprocity among the state regulators.

*C. Chinese application.* Although China, like the US, benefits from the “laboratory” of experimentation across provinces/states and regions, uniformity and transparency of regulation will be increasingly important as insurers expand nationally and consumers gain greater geographic and socioeconomic mobility in China’s dynamic economy. China should avoid the fragmentation of insurance regulation associated with the self-funded employer-based insurance plans in the US, focusing on consistent nationwide regulation for the basic social insurance programs and supplemental commercial insurance programs.

**5. Improve Quality of Care**

*A. Rationale.* Commercial health insurance companies assume risk for the quality and quantity of health care provided to their insureds. Health insurance companies will not participate widely in markets where there is no established system for ensuring the delivery of appropriate care. Therefore, developing and standardizing the health care delivery sytem is essential for the growth of commercial health insurance.

*B. U.S. Experience.* The U.S. healthcare system has its own quality problems, but generally operates according to known and accepted standards of care. This provides a level of predictibility to the risk assumed by carriers.

*C. Chinese Application.* The health care delivery system in China has been criticized as inefficient and lacking in quality standards. Studies of some provinces have concluded that 70% of village doctors have no education beyond high school and have received an average of 20 months of medical training. There is evidence that diagnostic tools such as MRIs and surgical procedures are widely overused because of compensation schemes that encourage such overuse. One study also concluded that less than 2% of drug prescriptions in township health centers and village clinics have a rational basis. These factors have caused health care costs to rise dramatically in the past 15 years. Standardizing delivery and reforming provider payment incentives are essential to the sustainable development of both social and commercial health insurance, especially in rural areas. Provider reimbursement reforms can remove the incentive for wasteful overuse and can be used to require adherence to established standards of care. Further research into innovation in health service delivery and strategic purchasing will be important complements to expanding insurance coverage in China, both for social insurance program sustainability and commercial insurance viability.

**6. Promote Wellness**

*A. Rationale.* The cost of health insurance is driven by the underlying cost of medical care. Healthcare expenditures vary according to the quality of care (discussed above) as well as the underlying health needs of the population. Many researchers and policymakers have focused on the potential cost savings of increased emphasis on prevention. The logic is simple: If the population is healthier, not only will people enjoy longer, healthier lives, but health coverage costs and insurance premiums will be lower, thus allowing more people access to care.

*B. U.S. Experience.* Smoking and obesity are major cost drivers in the U.S. They are responsible for many types of cancer and heart disease, as well as increased rates of diabetes and other chronic illnesses. There is some suggestive evidence that employers and communities that have implemented health management programs have reduced smoking and obesity and have thereby successfully contained health insurance premium increases. Chronic disease management programs have also been shown to be cost-effective for many diseases and healthcare settings.

*C. Chinese Application.* The Chinese government should strongly encourage and create incentives for the development of health improvement and chronic disease management programs. Here, too, reform away from fee-for-service (FFS) payment will be important, since providers currently do not have financial incentive to develop prevention and disease management programs (and indeed may loose significant revenue from reduced need for acute services), while the purchasers lack the medical expertise to develop such programs. Payment reform can help align delivery system reforms with the social goal of wellness.

**7. Tax Tobacco**

*A. Rationale.* Public health insurance programs, as well as premium assistance and tax subsidies, cost money. As governments look to fund such programs, tobacco is a good source of revenue because tobacco use is responsible for a substantial share of health care costs. In a developed health care system that spreads risk, whether through public programs or health insurance, non-smokers (generally the majority of the population in the west, although the minority of men and majority of women in China) end up paying for most of the costs of treating smoking-related diseases. By taxing the product and using the revenue for health care programs, a government can achieve several benefits: 1) The higher price of cigarettes reduces demand, especially among children; 2) Smokers take responsibility for a larger share of the financial cost of treating the diseases related to their lifestyle choice; 3) Health insurance premiums and public taxes for health care are lower for non-smokers; 4) The tobacco tax is more popular than most other taxes; 5) Revenue is available to help more people afford health insurance.

*B. U.S. Experience.* The U.S. spends $50 billion per year on medical care for tobacco related diseases. Tobacco in the U.S. imposes another $50 billion per year in social costs including lost productivity. Many states have imposed taxes on tobacco to support health care programs. For example, the Insure Montana program that provides premium assistance to small businesses to cover their employees draws the money for the tax subsidies from a special revenue account funded by the tobacco tax. Other states fund children's health insurance programs with tobacco tax revenue.

*C. Chinese application.* While the U.S. has about 65 million smokers, China has 320 million--67 % of male adults (but fortunately only 4% of female adults.) About 1.8 trillion cigarettes are smoked in China each year, roughly 90 billion packs. Current taxes total $31 billion, suggesting there is room for increase. Although the health costs for treating smoking-related diseases in China have been estimated at about $7 billion annually, that number is certain to rise as access to health care services improves. Raising the tobacco tax will increase revenue while decreasing health care costs. It will also curb demand for smoking which would be consistent with China's participation in the WHO's Framework Convention on Tobacco Control. Although tobacco taxation is a large fiscal issue in China, and many local governments derive substantial benefits from promoting local tobacco industry, health insurers should lend a voice to those who emphasize the health costs of tobacco industry promotion in China.

**7. Control Health Care Costs**

*A. Rationale.* Perhaps the greatest barrier to affordability of health insurance is the rapidly rising cost of health care and prescription drugs.

*B. U.S. Experience.* With 16% of GDP devoted to health care, the U.S. has the worst record of controlling health care costs. The causes of healthcare spending growth are complicated and multifaceted. As Joseph Newhouse and others have pointed out, the most fundamental cause appears to be the increasing capabilities of medicine. No healthcare system in the world has escaped the dilemma associated with providing equitable access to more and more expensive technologies for extending and improving life. Compared to most other OECD countries, the even higher US level of healthcare spending, if not rate of growth, has been attributed to an array of factors from rapid innovation to direct-to-consumer advertising of drugs to trade barriers; from wellness issues (discussed above) to poor information systems and distorted provider reimbursement schemes. Hospitals and doctors make three times more money than the average among OECD countries. Many unnecessary procedures are performed. Most providers are still paid more to render more care (i.e., FFS) instead of by the quality of the outcome (i.e., pay for performance). As Wennberg and colleagues have long pointed out, the amount and cost of services varies dramatically from state to state. Managed care successfully controlled costs briefly in the 1990s, but Americans rejected the limitations on use and choice of care.

*C. Chinese Application.* Some cost containment strategies can be integrated within reforms to addess the quality of care and wellness issues discussed above. For example, implementing case-based payment rates for hospitals, as the US has for both public and private insurers since the 1980s, can reduce costs without damaging quality if regulatory oversight and risk adjustment methods are sufficient. Such a system can also remove the strong financial incentive for over-prescription of drugs, a problem mentioned by the PICC Health representative at the Yichang meeting. Another way to contain rising costs is through the creation of a quality, integrated health information technology (HIT) system. A nationwide, integrated HIT system will provide an optimal platform for monitoring the quality of health care services and effectiveness of outcomes. Electronic medical records will allow doctors to avoid duplicative care and reduce medical errors. Restricting advertising and marketing by vendors of health products and services can help to prevent artificially inflated demand and fraudulent claims about efficacy. Payment incentives and integrated service delivery systems associated with managed care can help to reduce excessive, inappropriate use of services.

**8. Fight Fraud**

*A. Rationale.* Fraud emerges in markets where people are desperate for coverage and cannot afford it. Fraudulent enterprises cheat consumers, leave them without coverage, and undermine legitimate companies.

*B. U.S. Experience.* Unlicensed and fake health insurance companies have sold tens of thousands of policies and left millions of dollars in medical bills unpaid. States in the U.S. have prosecuted fake insurance aggressively and conducted multi-state investigations. Discount card companies have preyed upon people desperate for health coverage, as well. They advertise “full coverage” “for the entire family” and appear tomany to be insurance, which they are not. In fact, they offer discounts for services provided by a network of providers, but many of the companies have no real discount agreements with the named providers. Some states have adopted laws giving insurance departments jurisdiction over discount cards to regulate advertising and ensure that provider networks are genuine.

*C. Chinese application.* Fraud has become a world wide business with the growth of electronic communication. As the Chinese people struggle to afford health coverage for themselves and their families, they will be vulnerable to those that would sell them cheaply something that looks like health insurance but is worthless. China should adopt strong laws to prohibit unlicensed health insurance companies and to regulate the medical discount card business.

### 9. Blend Public and Private Sectors

*A. Rationale.* Most countries agree that the ideal system provides access to basic health care for all. Because unlimited care for all is deemed too expensive for the public sector in many countries, private health insurance supplements the public sector. CIRC officials, including Director Meng, have indicated an interest in this blended approach.

*B. U.S. Experience.* The United States maintains public health care coverage for the poor, the old, the disabled, government employees, and disabled veterans. Medicaid covers those whose family income is below a percentage of the federal poverty level. (The ceiling ranges from 100-300% of poverty depending on the state.) Medicare covers those over 65 years of age and older. The State Children's Health Insurance Program covers low income children. The Veteran's Administration hospitals are available to active, disabled and some retired military personnel. Commercial health insurance for the rest of the population is mainly delivered through employers. About 9% of the market is individual coverage. Commercial insurance also supplements the public programs, paying for costs that public programs do not. Recently, the U.S. adopted a program that allows commercial insurers to sell Medicare coverage and supplemental coverage together in a "Medicare Advantage" plan. The U.S. government has also relied on private insurers to sell a special supplemental Medicare coverage for prescription drugs. Moreover, in the US and many other countries, healthcare delivery systems feature a mixture of government-owned and private (for-profit and not-for-profit) providers.

*C. Chinese Application.* As CIRC representatives at the meeting repeatedly pointed out, China has a more government-led healthcare insurance and delivery system, although important development of the private sector has already begun. Unfortunately (as Professor Wei pointed out), the population left out of formal social insurance programs to date have been the vulnerable groups that social insurance programs were developed in the US to cover, such as the elderly and the poor. China's current strategy for expanding NCMS coverage in rural areas and urban employee and urban resident insurance for city-dwellers presents a promising framework for eventually reaching universal coverage through basic social insurance programs. However, fiscal constraints and the diversity of socioeconomic groups in China suggest the need for a mixture of public and private coverage to meet diverse layers of demand. Including commercial insurers as TPAs in social insurance programs would be one effective way to achieve a blend of public and private insurance for efficiency and flexibility, even without explicit competition among insurance plans. Regulation and risk adjustment methods will be important for making sure that supplemental commercial insurance does not evolve toward a "two-tier" system accessible only to the rich. China's experimentation with ownership diversification in healthcare service delivery can also play a role in developing a diverse supply of services that then also allows managed care methods and strategic purchasing to control costs while improving quality.

***John MORRISON*** *is an Insurance Commissioner in the State of Montana.*
**John MORRISON** 是蒙大拿州的一位保险专员。

***Karen EGGLESTON*** *is Comparative Health Policy Program Director of Walter H. Shorenstein Asia-Pacific Research Center at Stanford University.*
**Karen EGGLESTON** 是斯坦福大学 Walter H. Shorenstein 亚太研究所比较健康政策项目的主任。

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# Superheroes and Anti-Theft Devices in Southern China: What the Psychology of Barred Windows Can Teach Us about China and America's Education Systems

# 中国南方的超级英雄与防盗系统：隔离窗的心理学对于中美教育体系的启示

Thomas TALHELM

## FEAR, SPIDERMAN, AND SHIPAI DONG LU

The Chinese place a high importance on education. So high, in fact, that Chinese people often ask me what my experience teaching, doing psychology research, and studying in China has taught me about the educational differences between the US and China. This is a complex question, so I like to start by talking about something simple: walking down the street.

Across the street from the high school in Guangzhou where I teach is Shipai Dong Lu, a crowded street of electric signs and fragrant restaurants. I often walk down Shipai Dong Lu in the evenings with thoughts of the classes I taught that day flying through my head. As I'm walking down the crowded street I invariably notice the metal bars across all the apartment windows dozens of floors up from the ground, and I wonder: *What are these people afraid of*?

There's no possible way a thief would climb so high to break into the 20th floor of a nondescript apartment (especially when there are many more apartments much closer to the ground). Yet when I mentioned this to a Chinese friend of mine, he replied reflexively, "You don't think someone could climb up there!?" As soon as the words left his mouth and incredulity had spread across my brow, his judgment got the better of him, but his initial reaction was telling.

Now as I walk by, images flash through my mind of an evil Spiderman using his superpowers to jump up to 20th floor, only to be frustrated because there are metal bars covering the windows. But are the people on the 20th floor really afraid of Spiderman attacking them in the middle of the night? Of course not. Instead, I think the fears of the residents on the 20th floor can be explained with research from Columbia University psychologist, E. Tory Higgins.

## PERSONALITY THEORY AND METAL BARS OVER THE WINDOWS

During Higgins' research in the late 1980's on how people pursue goals, he came out with a theory about personalities centered on an idea he called "regulatory focus." Higgins says when people pursue goals there are two types of strategies: prevention-focused and promotion-focused.

Those who are prevention-focused think of their goals using vigilance and care to prevent mistakes and meet a minimum standard. The people living on the 20th floor on Shipai Dong Lu, I believe, are prime examples of prevention focus. Promotion-focused people approach their goals with an eagerness to advance toward larger goals and a willingness to make mistakes.

But isn't succeeding pretty much the same as not failing? It's not, and to understand the difference between these "preventioners" and "promotioners" it helps to use an example from signal detection theory.

In the classic experiment, a person wears headphones and must tell the experimenter whether or not there was a sound through the headphones at predetermined moments. Although they're facing the same task, promotioners and preventioners chase different goals.

A promotioner will more often report correct detections, saying that they heard the tone when the tone was actually played. But they will also report more false hits, saying that they heard the tone when the really was no tone.

By contrast, a preventioner will more often report correct rejections, saying that they didn't hear the tone when there was no tone. But they will also report more misses, saying that they didn't hear the tone when there actually was a tone.

The promotioners are eager to act and speak up for a positive answer, whereas the preventioners are looking to avoid acting when it could be the wrong answer. Promotioners are eager to see their actions cause success and preventioners are worried about when action could cause failure.

Whether or not someone is a preventioner or promotioner is so important, I think, that it can help explain small things like signal-detection experiments and the bars covering the windows of those 20$^{th}$-floor apartments, as well as large things like the differences between the US and Chinese education systems.

## US: PROMOTIONERS, CHINA: PREVENTIONERS

As Higgins demonstrated his theory in more and more experiments, his theory started to become bigger than just individuals' personalities. First, Higgins repeated his experiments with groups and found out that he could influence entire groups of people to behave as either promotioners or preventioners.

Next, psychologists started to use Higgins' idea with entire *cultures*, and soon there were experiments showing that, in general, Americans tend to be promtioners, whereas Chinese (and other East Asians) tend to be preventioners.

Psychologists argued that interdependent societies like those in East Asia tend to emphasize prevention and the lowering of the individual for the group goal, asking individuals to place aside their private aspirations. Independent societies like those of America and Western Europe, however, tend to emphasize promotion and the raising of the individual (and his or her aspirations) as the most important.

This, I think, is why the people living on the 20$^{th}$ floor have bars over their windows. They are concerned most about safety and preventing crime from happening to them. They're not alone in China. Two of the first characters I learned after coming to China were *an* and *quan*, which put together mean safety. Almost everywhere you go I see reminders to *zhuyi anquan*, pay attention to safety—a phrase that even sounds a little awkward in English.

Similarly, Western writers in China often remark on the importance of avoiding *luan* (chaos or disorder) in Chinese society. The French Sinologist Boye Lafayette De Mente writes that, "the main social, economic and political principle of China" has been "to prevent *luan* or *disorder*."

If people in China really are so concerned about avoiding *luan*, then perhaps this I seem to run into so many different Chinese words (e.g., *danxin*, *youxin*, *fachou*, *youlv*) that are all translated as 'worry.' And perhaps the reason so many Western writers find *luan* so interesting is because their own societies don't have the same emphasis on *luan* and don't see the world in the same way.

In yet another way, American society reinforces the idea that the world is a safe place and that perfection can be theirs when it encourages its children in love to find the best person for them. A Chinese friend of mine, on the other hand, recently told me that her mother warned her not to expect perfection, saying: “Do you want love or bread?”

Perhaps this is why Hollywood movies almost always have a happy ending, with the world saved, the bad guys punished, and the two right characters in love together at the end. We Americans are just convincing ourselves that usually, in the end, things turn out well. Of the Chinese movies I’ve seen, however, a large number end with the good guys crushed and the fated lovers slated for a future suffering apart. Americans are telling themselves that it pays to be a promotioner and the Chinese are saying that sometimes it's better to hedge bets and be a preventioner.

## IS THE WORLD A DANGEROUS PLACE?

I think that those people who live in the 20th-floor apartments on Shipai Dong Lu are classic preventioners. To understand why I think they’re preventioners, it’s important to understand these people’s philosophy.

An important part of Higgins’ theory is that regulatory focus is so important that it changes “which information people judge to be most important about their past experiences when considering future action.” In other words, a preventioner and promotioner can think about the same thing and reach two entirely different conclusions simply because one is a preventioner and one is a promotioner.

So, promotioners and preventioners see the world differently. You’d have to see the world differently if those bars covering the windows are to make any sense. Promotioners, who aspire to lofty, perhaps unrealistic long-term goals look at the world as a safe place where success is likely and failure is just a temporary setback. This causes promotioners to ignore dangers and be irrationally risky sometimes.

Preventioners, on the other hand, see the world as an inherently dangerous and unstable place where failure is common and success is rare. This causes preventioners to concentrate on dangers and be a bit irrationally concerned with safety sometimes, just like the people who live on the 20th floor and have metal bars over their windows protecting against Spiderman. To them, including my friend who defended the 20th-floor bars, there's a decent possibility that someone would climb up to the 20th floor to rob a nondescript apartment.

Yet with such simple world views, the potential for contradictions is enormous. As an American, I generally assume my world is safe, which would explain why when there were two separate murders across the street from my dormitory in Michigan, I still felt it was safe to walk alone at night. This is also why Americans who live in a country with a high rate of violent murder and gun ownership think that where they live is safe, while my Chinese friends who live in a country with no guns and much less violent crime than the US are afraid to walk in the street at night.

## PREVENTION, PROMOTION, AND EDUCATION

So after returning from a walk down Shipai Dong Lu, I go to English corner where my students tell me what they want to study in college, and the connection between prevention, promotion, and education becomes all the more clear.

In China, for various reasons, education is more pragmatic. My students, out of worries (of their own and of their parents) that the population is too large and that even college graduates can’t find jobs, most often choose majors that are very useful. Even at the University of Michigan, many of my Chinese classmates had majors in business, engineering, medicine, and the hard sciences—all majors that have a good chance of leading to a secure job.

Furthermore, my Chinese students are quick to decide what they want to study, judging from the fact that many of my high school students already know what they want to study. In the middle of their high school years, students in China are already being tracked to fit into groups of study so they can take the appropriate version of the Gaokao, the standardized high school entrance exam, and then apply to colleges according to their track.

In America, by contrast, a large part of the education system follows the ideals of a liberal arts education, despite much recent criticism that it's departing from the liberal arts. The goal of a liberal arts education is to give students general knowledge of many subjects and prepare intellectual capacities, rather than train students with professional or job-related skills. To do this, a typical liberal arts curriculum includes mathematics, literature, philosophy, history, languages, and science.

More importantly, a liberal arts education is supposed to make someone a "better," more well-rounded person who is encouraged to think critically about his or her life and place in the world. In other words, skills for an enriching life, rather than a skilled employee. Instead of having a specific goal like passing a test or getting a job in a certain field, a liberal arts education has a vague goal of simply making someone a more enlightened person and a more critical thinker.

In both countries, the education systems accommodate the respective styles. In my Chinese high school, the education system is already forcing students to choose majors and college entrance exams have students write down their intended majors, from which few stray. In the US, by contrast, high schools have loose and broad course requirements, and universities expect students to switch their majors after enrolling.

## PREVENTION, PROMOTION, AND EDUCATION GOALS

Higgins' theory of promotion and prevention focus fits neatly onto the different goals of the Chinese education system and the American education system. In fact, Higgins' theory produced an experiment that showed just how promotion and prevention can affect our goals, and how having a promotion focus can harm us.

In one experiment students were told about an excellent fellowship opportunity. Then one group was primed to think like a promotioner by framing the fellowship as a great opportunity to be seized, while the other group was primed to think like a preventioner by framing the fellowship as an opportunity they should not make the mistake to miss.

After the experiment, the researchers measured whether the students actually applied for the fellowship. They found that the promotioners were *less* likely to apply for the fellowship, whereas the preventioners were *more* likely to actually apply for the fellowship. Back in Higgins' theory, preventioners focus *quickly* to meet a minimum *standard*; promotioners focus on development toward some sort of ideal maximum goal, without a pressure toward speed. Because there's less worry and little emphasis on speed, sometimes promotioners are likely to let opportunities slip away.

Now, contrast the pragmatic attitudes of my students (and their parents) of choosing majors quickly and for a specific purpose against the relaxed attitude of me and my average American parents. When I was young, I, like most other American children, was told to dream for the stars. If I wanted to be president, I could. If I wanted to be a sports star, I could.

When it came to choosing a major, the ideas given to me were the same. As I graduated from high school and entered college, I had no idea what I wanted to major in. My parents, teachers, and friends encouraged me to take classes in whatever I felt like exploring, so I spent almost two of my four years taking classes in what I found interesting before I decided to major in psychology. Furthermore, when I chose psychology, the thought of a future career was not in the front of my mind. Rather, what I was concerned about was whether or not I loved learning about psychology.

## THE GAOKAO VS. THE SAT

Just yesterday I sat down with a student who had questions to ask me about the verbal portion of the SAT. I told the student that I had scored relatively well on the verbal portion, but she was surprised when I told her that there were many words on the test that I didn't know. After all, English is my native language, and I am a good student. How could there be so many words I didn't know?

The reason lies in the fact that the goals of the SAT and the Gaokao are different. The SAT, in its purest form, is supposed to be a test of your critical thinking skills. The SAT was developed by the developers of a similar army test designed to be an IQ test, rather than a test of accumulated knowledge. This much is suggested in the original name of the test, the Scholastic *Aptitude* Test. (The 'A' was later changed to stand for 'Assessment,' and then later the College Board declared that 'SAT' didn't stand for anything.)

Instead of directly testing how much knowledge you've accumulated, the SAT is supposed to test for pure critical thinking skills. Therefore, the SAT is not supposed to test whether or not I've memorized these words (although it does), but rather whether or not I have the critical thinking skills to figure out the answer even if I'm not sure what the word means.

The design of the math section should make this point even clearer. Besides the most basic algebra and geometry (like the Pythagorean Theorem), the test contains very little in the way of math knowledge. The test doesn't even come close to testing the content of the math curriculum of a college-bound high school graduate. When looking at an SAT math question, you probably don't think about whether covered this in school, but rather whether or not you can figure out. This is critical thinking, not content retrieval.

The Gaokao, on the other hand, has a much more specific goal of more or less testing the knowledge high school students have accumulated over their years of schooling. The Gaokao represents well the concrete goals of the Chinese education system.

## YOU'VE SUCCEEDED, WHAT NOW?

The Japanese graduate student I did psychology research with always used to complain that Japanese students were lazy. After they took the huge college entrance exam, she said, they didn't have to worry anymore and they relaxed in their college work. Here again, Higgins' theory can provide insight into these differences, this time the effect on motivation.

In yet another experiment, both promotioners and preventioners had to work on anagrams, unscrambling letters to form words. After completing several anagrams, the participants were told how well they had done on the anagrams.

Interestingly, not everyone was encouraged by hearing they had done well. Preventioners actually did worse after hearing that they were successful on the first part of the test. The preventioners thought that their concrete goal had been attained and thus they could rest. Promotioners on the other hand did even better on the second round after hearing that they had succeeded. Thus, it seems that success encourages promotioners to try even harder, whereas success encourages preventioners to relax.

Failure, on the other hand, helped encourage the preventioners. After hearing that they had done poorly, preventioners were more likely to do better on the second round. Promotioners, however, were discouraged by bad news, and did worse. Thus, failure encourages preventioners to try harder, whereas it discourages promotioners.

This fits nicely my colleague's complaint that Japanese college students weren't motivated to try hard. This could also explain some of the interesting differences I've seen in China. For example, teachers in China seem to give out more low grades (an effective strategy for preventioners), whereas grades are often inflated in the United States (an effective strategy for promotioners). In the same way, the American education system and American parents try hard to make kids feel good about themselves even when they fail, whereas parents in China often seem to be the first to criticize, and thus motivate, their children. This could also be why the parents of my Chinese friends like to use me and my Chinese ability to criticize their children's English ("Look at his Chinese! My son doesn't study his English hard.")

## CONCLUSIONS AND THE RETURN OF SPIDERMAN

Although, prevention and promotion focus influence our education systems deeply, it should be clear that neither preventioners nor promotioners are necessarily better off. Each worldview makes basic assumptions about reality and has its own shortcomings. Preventioners tend to be overconservative, whereas promotioners tend to be risk-takers. Naturally, neither attitude will be right or beneficial all of the time.

Furthermore, it should be clear that each attitude exists in a different context. In China, there are many more college applicants than there are spaces in college, making the college admissions process a situation where failure prevention is more important than being the best. China's economy is still developing, and it has an incredibly large population, making the education system much more do-or-die. Finally, China has a long history of imperial exams, which were similarly do-or-die affairs that could determine the lives and fortunes of the candidate and his family.

Yet I would hesitate to say that the differences I see in China are simply a result of the current economic situation or the history of imperial exams. The Chinese (or rather East Asian) take on education is not easily separated from the many parts of culture and society that it is consistent with and that support it. There's probably a reason why the imperial exam system arose like it did in China in the first place, and that reason most likely has at least something to do with cultural thought and Higgins' theory.

Yet a better reason to suspect that prevention focus may be more important than the current economic situation is simply that other developed East Asian countries like Japan and South Korea have education systems still very much like China's.

Western and Eastern societies helps dictate what its individuals think is important and how they understand their environment. Until the day culture turns on its head, my American friend in Chicago will happily continue to walk down the street alone at night despite the fact that he was mugged last year, and the bars protecting the windows on the 20$^{th}$ floor of the apartment building on Shipai Dong Lu will continue to guard against flying criminals—and Spiderman too.

## FURTHER READING

For those interested in further reading, the experiments and theory built around Higgins' idea of regulatory focus, a great resource is the Handbook of Self-Regulation: Research, Theory, and Applications (see below). I must warn, however, that (to the best of my knowledge), E. Tory

Higgins has never seen the bars on the windows of the 20th floor on Shipai Dong Lu, so experimental evidence therein is confined to the laboratory. Also, the words “promotioner” and “preventioner” are to the best of my knowledge my own creations and not used by Professor Higgins.

Higgins, T.E. & Spiegel, S. (2004). Promotion and Prevention Strategies for Self-Regulation. In: Roy F. Baumeister, Kathleen D. Vohs. (Eds.). Handbook of Self-Regulation: Research, Theory, and Applications. Guilford Press.

Evidence for promotion and prevention being spread within a group can be found in:

Levine, Higgins, & Choi (2000). Development of Strategic Norms in Groups. Organizational Behavior and Human Decision Processes, 82(1), 88-101.

Finally, evidence that interdependent societies tend to be more prevention focused comes from:

Aaker, J.L. & Lee, A.Y. (2001). “I” Seek Pleasures and “We” Avoid Pains: The Role of Self-Regulatory Goals in Information Processing and Persuasion. Journal of Consumer Research, 28.

***Thomas TALHELM*** *is a graduate of the University of Michigan and a former Princeton in Asia fellow, based in Guangzhou, China. He's currently studying Chinese literature in Beijing and writing freelance.*

**Thomas TALHELM** 是密歇根大学的毕业生，曾是位于广州的普林斯顿亚洲分会成员。他目前在北京学习中国文学，从事自由写作。

# 在中国政法大学讲授公司法

# Teaching Corporation Law at China University of Political Science and Law

蔡 华

（Hua CAI）

2007 年 9 月至 12 月间，我受中国政法大学的邀请，为该校法律硕士学生讲授公司法。OYCF-Gregory C. and Paula K. Chow Teaching Fellowship 为这次访问提供了部分经济支持。

中国政法大学是中国法律专业方面一所非常重要的高校。近半个世纪以来，中国政法大学为中国的法律职业界培养了众多人才。

中国现行《公司法》于 1993 年由全国人大常委会通过，后经 1994 年、2004 年及 2005 年三次修改。其中，2005 年对《公司法》的修改，在一些中国公司法学者看来，使中国公司法进一步现代化，适应了现代商业发展的需要。

1993 年至 1997 年之间，我在中国政法大学就学，其间，因兴趣所在，对中国公司法有些深入了解。后来在美国法学院学习期间，又将公司法作为自己的主攻方向之一，并以法和经济学作为基本方法，对公司法理论进行了一些梳理和研究。

如果从比较公司法及法律经济分析的角度出发来看中国的公司法及公司法教学与研究，就会发现其中一些普遍性的问题。中国公司法基本制度建立在大陆法系“法人制度”上，过分重于对债权人利益之保护，而轻于对股东权利之保护。相应地，公司法规定的强行性规则过多，而授权性规则太少。更为严重的是，尽管现行公司法对董事、经理受信义务(Fiduciary Duty)有原则性规定，但由于中国公司法可诉性差、法院专业水准欠佳等原因，围绕公司法而进行的诉讼案件极少，公司法司法实践的不发达，导致公司法学术界、实务界对受信义务这一公司制度中最关键的内容，缺乏了解。

反观国外公司法研究及实务，则是另一幅风景。自上世纪三十年代以来，以罗纳德•科斯发表的《公司的本质》及柏利和米恩斯发表的《现代公司与私有财产》为标志，公司法研究中广泛地引入了经济学的研究方法和思路。交叉学科的训练又使得法律职业界对经济发展、商业需要十分了解。在司法实践中，以美国特拉华州法院为代表，发展出一套适应商业发展的公司法律制度，尤其是无数围绕董事、经理受信义务的判例，成为公司管理层及公司法律师从事各项事务的指南。

当然，美国公司法也并非十全十美。由于各州之间为争取企业在本州注册，争先恐后以提供对管理层有利的公司法规定，形成所谓“朝底竞争”（Race to the bottom），并进而导致一系列公司治理结构中的问题，如过高的管理层薪酬，由原告律师（Plaintiff’s Bar）和大公司董事会共谋而产生的董事会无人负责等。

我决心利用在中国政法大学讲学的机会，从比较公司法的角度，运用法和经济学的视角，带领中国学生重新理解和分析中国公司法。同时，在教学方法上，我采用了美国法学院的“苏格拉底式”的案例教学方法，用案例来讲解公司法，在讨论中挑战学生的思维惯性，培养他们独立思考问题的能力。在教学材料上，我以中国现行公司法为纲，但加入了许多国外公司法，尤其是美国公司法的判例和学说。

这些目标很高，但我发现实现起来，有颇多困难需要克服。中国学生习惯了照本宣科式的教学，让他们对问题进行开放的讨论，而又不提供唯一的答案，使一些学生感觉困惑。而将经济学的分析方式引入实务法的教学当中，对于没有经济学基础的学生而言，颇有一些挑战。由于教学方法及内容的特殊性，我没有合适的现成教材可用，所以很难让学生做好课前预习。

令我欣慰的是，政法大学法律硕士班上的大多数学生，勤奋、聪颖而好学。他们很快就接受了我的教学方式，愿意迎接在智识上的挑战。学生们在课堂上异常踊跃发言、争论，从不同的角度分析公司法的问题与案例。一些没有经济学基础的学生，在课后自学经济学的基本原理。几个星期下来，我能够从课堂讨论中感受到他们的短时间内在思维方式上的长足进步。很快，这门课也成为最受学生欢迎的课程之一。我的正式注册学生在 190 人左右，但一个 210 席的阶梯教室，经常座无虚席。

课堂之外，我每周安排两到三个小时的办公时间，会见学生，回答他们的任何问题，无论是否与公司法有关。学生们乐见这样的机会。很快，我必须将单独约见调整为原则上同时约见三位学生。

这门课 54 个课时很快就要结束，终于到了最后一节课。在最后一节课上，我回顾我们在一个学期中一起讨论过的公司法问题，最后，我告诉他们，我愿意回答他们的任何问题。很有意思的是，学生们提出的关于公司法的问题并不多，更多的是关于中美两国法学院教育方式，关于人生选择，关于理想与现实。

当下课铃声响起，学生代表们送上一大束鲜花，而如雷掌声响起，经久不绝。那一瞬间，我深刻了解，此程收获很多，对我本人是这样，对学生们也是这样。

一个月后，我在香港办公室收到政法大学寄来的学生期末考试的答卷。在每一份答卷中，我都可以感觉得我的学生们所经历的对公司法、对法律的一段精神旅程。

（报告人希望借此机会，表达对中国政法大学校方，尤其是方流芳教授，及 OYCF 的感谢。）

**蔡华**为斯坦福大学法律博士（JD），现为 Latham & Watkins LLP 香港办公室律师。

***Hua CAI*** *received the J.D. degree from Stanford University and is now an attorney in the Hong Kong office of Latham & Watkins LLP.*

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*Perspectives: China and the World*

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《视角》是为数不多的双语学术期刊之一。以往我们的英文版和中文版分开发行，现中、英文文章均在同一期发表，并附中、英文内容摘要，以方便不同语言背景的读者阅读。

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