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Executive Editor of Issue: **Sida LIU**

本期责任编辑: **刘思达**

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## From the Editors

When this issue of *Perspectives* is being published, the situation in Urumqi is still intense. The Uighur and Han populations, who used to live together peacefully, seem to have become sworn enemies after the bloody riot in July and the subsequent syringe attacks. Compared to the riot in Tibet last year, this incident in Xinjiang resulted in a higher death toll, and it also constituted a tougher problem for the government. As persistent ethnic conflicts intensify, it has become less likely that they could be resolved by simple iron-fist policies.

The problem in Xinjiang is a long-term historical problem, which is related to the coexistence and conflict between the Chinese civilization and the nomads to the north and the west. A precondition for solving ethnic problem is to have a basic understanding and recognition of its historical background. This issue presents WEI Zhou's talk on the life of nomads and its influence on Chinese history. From the differences between agricultural civilization and nomadic ethnic groups in terms of basic lifestyles, the author analyzes the Chinese civilization's institutionalization and fixation of nomadic ethnic groups. Although the article does not refer to Xinjiang explicitly, it provides a rare perspective for our understanding of the problem in Xinjiang.

As China's domestic ethnic conflicts intensify, a trade war is also quietly happening between China and the United States. The Obama government declared a punitive tax on tires imported from China as a way to win the support of labor unions, and the Chinese government also initiated antidumping reviews for some US-imported products. The highly publicized political plays reveal a high level of interdependency between the Chinese and the American economies. This issue publishes SUN Jin's legal and policy analysis of the Coca Cola-Hui Yuan merger case, as well as his comments on issues related to the implementation of the Anti-Monopoly Law and trade protection. Also published is LIANG Jie's review on Yasheng Huang's new book *Capitalism with Chinese Characteristics*.

The OYCF 11<sup>th</sup> Annual Meeting, held at Wagner College in New York in late May, also made the Chinese economy under the financial crisis its topic. We publish the meeting summaries and Timothy J. MADIGAN's teaching report of the social stratification course at Central China Normal University in the OYCF Reports.

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

## 编辑寄语

在本期《视角》杂志出版之际，乌鲁木齐的局势依然是剑拔弩张，曾经和睦相处的维、汉两族同胞，在七月那场血腥的暴乱和随后的一系列针刺事件之后，似乎已是不共戴天。与去年的西藏暴乱相比，这次新疆的事件不但死亡人数更多，而且也让政府更为棘手，因为当地多年来一直存在的民族矛盾进一步激化，已经不是简单的铁腕政策可以解决的了。

新疆问题是一个长时期的历史问题，涉及到了中华文明与西北游牧民族千百年来共存与冲突：妥善处理民族问题的前提，是要对其所产生的历史背景有一个基本的理解和认识。本期刊载维舟关于游牧生活与中国历史的演讲，作者从农业文明和游牧民族的基本生活方式差异入手，详尽地分析了中华文明对游牧民族的秩序化和固定化过程。文章虽未直接涉及新疆，却为我们理解新疆问题提供了一个难得的视角。

在民族冲突愈演愈烈的同时，中美之间的一场贸易战也正在悄然展开，奥巴马政府为了取得国内工会组织的支持，宣布对中国进口轮胎征收惩罚性关税，中国政府也随即对美国的部分进口商品展开反倾销审查。政治角力的背后，显示出事实上是中美两国经济的高度相互依赖性。本期刊载孙晋对于可口可乐并购汇源案的法律与政策分析，以及通过这一案例对反垄断法实施与贸易保护等问题的评论。同期刊载的还有梁捷对黄亚生的新作《有中国特色的资本主义》的书评，中国经济的发展趋向及其对全球经济的影响，无疑是未来几年里海内外学者所共同关注的一个焦点问题。

海外中国青年论坛今年五月底在纽约市的瓦格纳学院召开的第十一届年会，也将金融危机影响下的中国经济作为主题。本期的论坛简报发表本届年会各小组报告的摘要，并刊载 Timothy J. Madigan 在华中师范大学讲授社会分层的教学报告。

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。

Wish you all a pleasant summer!

祝夏季愉快!

Sida LIU

刘思达

Executive Editor

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## 游牧生活对中国历史的影响

### The Impacts of Nomads on Chinese History

维舟

(Zhou WEI)

**[内容提要]** 本文是作者的一篇演讲，系统地探讨了中国各游牧民族的生活方式及其与中原王朝的互动关系对中国历史的各种影响。

**[ABSTRACT]** This essay is based on the author's speech. It systematically discusses the lifestyle of nomads in China and the various impacts of their interactions with the Middle Kingdom on Chinese history.

(一)

中国文明始终长期面对着一个非常广阔的内陆游牧民族地区，且面对的还是全世界游牧民族中力量最强的一支，这对中国历史产生了非常深刻的影响。但我以前读历史的时候，觉得很多问题都没讲明白，比如说为什么匈奴、突厥、契丹，这一拨拨的，最后蒙古又出来了；隔一段时间，一拨民族消失了，又一拨民族冒出来了。反正汉族周而复始地，几千年下来就是无法彻底打败他们。哪怕中国历史上所谓最强盛的汉唐，大部分时候也拿他们没办法。而这些游牧民族，历史上人口数量是非常少的。无论匈奴还是蒙古，一般在崛起的时候，人数都只有 100 万左右；而蒙古崛起时中国内地人口大约 1 个亿。从比例上说 100 个人打不过 1 个人似乎很难说得过去。

我那时一直在考虑这个问题，就是为什么会有这样的历史现象，包括现在已经成为民族象征的长城。长城实际是中国内陆农业民族和游牧民族长期对峙的一个象征，也是它最终的一个结果。对它的涵义，一直有一个比较单一的解释：长城被认为是我们这个民族爱好和平、但相对封闭和停滞的象征。我个人对这些阐释不太满意，而且这一说法也太简化。这些年思考渐渐多了，觉得以前我们很多对游牧民族的误解，或者对一些历史现象的困惑，实际上源于我们对他们整个游牧生活方式的不理解。我们以前对游牧民族的理解，会相对多地从农业文明的角度去理解，也就是把它看作一个东方学意义上的他者，但对这个他者我们是不够了解的。为什么？因为游牧民族的生活方式，对农业民族是比较陌生的。

早先对他们的理解，我都是从书本上得来的，后来去到新疆、甘南、川西一带的草原，是夏末秋初的时候去的，车子从草原开过的时候，景象非常开阔，草原上野花盛开，吸引很多人下车拍照留念。我当时看到这个景象，第一反应的确是的确非常壮美，但如果一个人在这里生活，将是一件很可怕的事。如果没有车辆，一个人被抛弃在草原上，那简直是没法活的。草当然很美，但除了草之外没有任何东西，想走出这片草原需要十天半个月，在这个过程中，你可能已经死掉了。因此这一方面感受到一种引起敬畏的伟大的单调，接近康德美学意义上的崇高；但另一面又有一种恐惧感，也就是帕斯卡说的“无限的空间之寂静使我感到恐怖”。所以我在看到这个的时候，就有一点点理解游牧民族他们的反应，他们的生活方式，以及他们对牲畜的这种极其深厚的感情。

农民的最深厚的感情是关于土地的，中国文学中有很多对土地和农业生活的赞美，比如艾青的诗：为什么我眼中常含着泪水，因为我对这土地爱得深沉。这是农民经常有的感情，对土地的感情。但游牧民族对土地却可以说是没有感情的，虽然他们的文艺创作上也

有一些模拟了农业民族对土地的感情，像腾格尔唱的《蒙古人》：“这就是蒙古人，热爱家乡的人。”歌是挺好听的，但我对歌词的第一反应就是：为什么一个蒙古人会声称自己是一个热爱故乡的人？其实对纯正的游牧民族来说，他对故乡是没有感情的，他也没有故乡这个概念，他的生活始终对土地绝不留恋，他的生活、生命依赖于牲畜，感情也是和牲畜联结在一起的。诸位可以想象，在一个开阔无边的草原上，如果没有牲畜，人几乎是没法活下去的。除了草没有物产，猎物不多，此外要么袭击、抢劫别的部落，否则就只能等死。所以我们作为游客，经过这片草原的时候，觉得它是很美的，可是你想想看，同一片草原，当年红军过草地的时候，留给他们的是一种多么恐怖的记忆，所谓爬雪山、过草地，没有一个敌人，但比任何敌人都可怕。只靠双脚在这里是很惨的，很难在草地上生活下去。

## (二)

那么游牧这样一种生活方式是怎么产生的？关于这个问题很难回答，有各种各样的理论解释。大致比较容易被人接受的观点是：农业文明和游牧文明的分离大约是在公元前两千年左右。在这个阶段，产生了几对历史有重大影响的转折，一是草原上气候的干旱，二是牲畜群的增多，第三是骑马人群的出现。这三者实际上是相互有关联的。如果草原长期干旱的话，它就必须有一些长途的迁徙，而且随着放牧羊群的增多，必须就有一些更加好的控制牲畜群的方式。当代内蒙古的牧民，单个人大概可以放牧 150 到 200 只羊，但如果他是骑在马上，那一个人就可以至少控制 500 只羊，因为骑马使他的控制范围大大增加；如果是两个牧民，就大概可以控制 2000 只羊。

所以最根本的转折，还是骑马这个因素。麦高文在《中亚古国史》里提出：自古以来，大部分民族拿牲畜，要么肉食，要么用来载重，第一个想到骑在动物背上的，就是游牧的斯基泰人，而这是一个伟大的创举。这个转折我们现在看起来，是一个很平淡无奇的东西嘛，就像小时候，老师说中国四大发明的造纸、印刷术、火药等，我觉得很奇怪，这么普通的东西为什么会被认为是四大发明？长大后慢慢了解到，这些看似平淡无奇的东西，对历史产生的影响是极其深远和深刻的。就以骑马来讲，在没有发明骑马之前，一个以放牧牲畜为生的族群，跟农业民族几乎是无法抗衡的，因为这样一个靠狩猎和动物为生的族群，不得不采取比较分散的方式生活，如果这个族群太大，就没法保证整体的健康和生活质量。狩猎是具有偶然性的，可能几天或十几天才可能打到一只猎物。那么，你整个族群如果要生存，就必须一小块一小块，否则大家都没得吃。但农业文明就可以聚集在一起，形成一个比较庞大的组织，产量产出都比较稳定，有保证。大型组织和密集人群又容易产生分工，形成更专业化的群体发展技术。所以说，农业民族与游牧民族的对抗，明显的就是前者的科技工艺、兵器装备比较强，刀剑更锋利、弓箭射程更远、穿透力更强。一个以驯养动物为主的民族与农业民族在这一点上，总是处于下风，很难和它对抗的。

这一点已经被历史所证明，先秦时代，也就是长城正式建立之前，华夏族在北方和以畜牧业为生的这些人开始斗争的时候，一般来说是农业民族占上风的。就像前面说的，我们看长城好像是一个和平的象征，实际上我个人认为这是一个误解。长城是我们这个农业民族武力圈地的工具，长城以南的大片土地，都是这样抢过来的。春秋战国时代，以饲养动物为生的族群，它的分布界限是很南的，在洛阳附近、关中、山西南部一带都有。比如《左传》记载《殽之战》，秦军向东进军时，晋军主帅先轾的第一反应就是“遽兴姜戎”。姜戎就是一支以饲养牲畜为生的游牧民族，他们和晋国这个农业民族离得很近，所以当秦军打过来的时候，晋人第一反应就是先把这些人召集过来：你帮我们去打仗。这跟俄国和哥萨克骑兵的关系有点类似。后来这部分人，就慢慢被汉人所同化和吞并了。这个同化的过程是很漫长的，大概从商朝到秦朝这个阶段，一千多年的时间里，华夏族一直在通过宗族政治，把一群群人分配到一些外围宜农宜牧的地方，让他们自立门户，建立起一座座城池，锻造武器，如果你把一个蛮族打退了，那这块土地就是你的了。就有点像圈地运动。随着武力的扩张，通过这种方式殖民化，慢慢地就把越来越多的土地都圈起来了，那么圈到最后，产生了一个大圈，就是长城。

所以我认为，长城曾是扩张的工具，可以说是一种武装殖民的产物。那么为什么农业民族守着长城这一带，不再往前推进，往外扩张了呢？因为长城外面的土地对他已经没用了。黄仁宇曾说，长城和 15 英寸降雨线基本重合——15 英寸等于 375 毫米，也就是相当于上海年降雨量的不到 1/3，低于这个降水量就太干旱了，农业无法有稳定的收成。因为要让一个地方长出粮食来，必须要有雨水，水是农业的生命线。中原的农业民族为什么那么重视水利，因为农业说穿了就是一个水利的问题。长城以北的土地因此就难以被农业技术利用。中国从西汉到清朝两千年的历史里，中原的主体民族，不停地想要用武力来征服长城以外的民族，但实际上一直没办法达到。从西汉以降，包括像女真建立的金朝，中原主体思想始终对游牧民族有一种很突出的观念：得其地不可居，得其民不可用。就是说得到这片土地和人口对你都是没有价值的。所以在这种情况之下，采取什么办法呢？中原王朝的办法就是隔三岔五地派一批人出塞去，把游牧民族杀掉一拨；或者通过大量分封，比如说这块草原上一共有十几个部落，每个部落都封你一个官职，彼此不相隶属，使之无法形成统一的权威，这样就把威胁减少到最低。这两种方法，一是屠杀，一是分而治之。在无法彻底控制这片草原的情况下，这可以说是仅有的办法。那么问题又来了，它为什么就是没办法控制这块土地呢？

建立帝国，必须要有一个积累的过程，点点滴滴的。这在中原王朝对南方的征服上可以很清晰地体现出来。现在人数最多的少数民族壮族有 1600 万人，可是我们一般人对壮族历史几乎毫无所知，这个民族出过什么有名的人物？我想在座的各位可能也答不上来。而游牧民族虽然数量少，却出过很多厉害角色。为什么呢？中原王朝在对南方征服的时候，采用武装殖民的方式，其成果是可积累的，慢慢地形成一个控制的网络，开始的时候可能是一个屯垦的点、驿站或堡垒，慢慢地就串出一条线，通过交通线的连接，进而到最后控制整个面。但这种方式，在草原或者沙漠里就无法奏效，你无法在那里来进行这种帝国的控制。中国历史上被宣扬得很辉煌的对北方游牧民族的征服，其实常常都是一次性的。什么叫一次性的？比如说霍去病对匈奴的征服，他可能出塞三千里，杀了十万人，杀完后就回去了，回去之后，那这片草原可能就十几年甚至上百年沉寂在那里，汉人也没有再去干扰、渗透、分割控制这片土地，因为它无法进行一个持久积累的控制，也不能向这里进行移民来予以有效占领。这就是一个最大的问题。

游牧和农业两种生活方式，最初不像后世这样截然对立。两者的分离是经过一个斗争过程的。这在《圣经》中也可以看到痕迹，亚当被逐出伊甸园后，上帝对他说：你必汗流满面才得糊口，直到你归了土。这里面反映了早期的畜牧人群的观念，即认为农业生活是很辛苦，需要奴隶般的劳作。这种观念和农业民族的观念是相反的。因为我们习惯从农业文明或定居文明的角度出发，很容易认为游牧民族的生活无比艰苦。在塞外苦寒的风雪之中，不能吃饱穿暖，生活游来荡去，居无定所，说不定还会遇到暴风雪，日子哪有江南小桥流水人家这么滋润。但游牧民族的看法恰巧是截然相反的，它不但不认为自己过的是辛苦的生活，相反它认为农民的生活才是最辛苦的。因为农民每天要在那里锄草、种地，但说不定遇上一场冰雹，整年的年成就都没了；在他看来，草自己会长，牲畜自己会吃草，除了挤奶简直什么也不用干，剩下的日子都是很逍遥自在很舒服的。一个看似进步的生活方式，未必就是最有吸引力的，就像在农民看来，流水线工人的生活也很操劳无趣。很多游牧民族之所以无法被定居文明同化，这是很重要的一个原因。

两者的分离和冲突是互为因果的。我刚才说到，在秦朝建立长城之前，实际上是一个农业文明向北扩张的过程，直到扩张到一个生态极限。跨出这个生态极限，你就发现扩张成本大大上升而收益骤减，攻占这片土地很辛苦，但种下粮食却又没什么收成，只能再放弃，到这个时候界限就开始固定下来。此时被驱逐到长城以北的这些人群，也开始了一个全面游牧化的历史过程。以前长城以南时，他经营畜牧业主要是徒步的，但当被逐出后，他就发现了一个更广阔的新天地，而在这片草原上如果不进一步依靠游牧生活进行大范围流动的话，他就没法生存。这正是我刚才说到的那个观点，就是在这片草原上生存必须要靠游牧生活。

## (三)

草原还是一个相对比较友好的环境，最极端的环境莫过于沙漠。希提的《阿拉伯通史》说，阿拉伯人就是骆驼的寄生虫。如果没有骆驼的话，在沙漠里生活是绝对无法想象的。阿拉伯人对骆驼的感情简直深到我们所无法想象的程度，如果剩下最后一捧水，即使此刻孩子在哭泣，他也宁可把这水给骆驼喝，因为如果骆驼死掉，也许全家都要跟着死掉，小孩子死掉嘛，可能还只是死一个人而已。他的整个生活都是围绕骆驼展开的，这在语言人类学上也有证明，阿拉伯人对骆驼大概有一千多个名词，这是我们所无法想象的。我们对骆驼最多就是区分公骆驼、母骆驼、小骆驼，因为农业民族没有必要去区分那么详细。但游牧民族不同，阿尔泰语系的各民族对牛马羊等牲畜的名词都是极其繁多的，单是不同毛色的马就有上百个名词。如果要击败游牧民族的话，最彻底的办法之一，就是把他们的牲畜掠夺走或者屠杀掉，这样的话，不管他们多么厉害，没有牲畜，在草原上也沒辦法生活下去。《魏书》中经常记载拓跋鲜卑攻打柔然、高车等北方游牧民族时斩首多少万人，掠夺了几万的牛马回来。以前我看的时候心想，掠夺多少牛马还要记载，大概是拓跋鲜卑游牧民族思想的残余吧？后来意识到，掠夺这些牛马，对游牧民族来说也是个致命的打击，是打击敌人的一个很彻底的方式。

马这种动物，可能是对人类历史产生最深远影响的一种动物吧，其影响之深刻，我想怎么强调都不为过。如果没有马匹，在古代交通那么落后的情况下，要建立一个大帝皇是无法想象的。马的速度，使得信息、货物的传播也好，军事政治的控制也好，都到了一个非常广阔的程度。张承志曾回忆文革时他下放的内蒙古东乌珠穆沁旗汗乌拉公社，说那儿每个老牧民的活动范围都是以 200 公里为半径的，这一区域内哪里有草场、哪里有水源他都知道得很清楚。那么农民的生活半径是多少呢？大约是在 5 公里，曹锦清研究浙北农村时得出结论，一般农民的婚配范围不超过 5 公里。两者比较，面积差 1600 倍，这就是一个非常可怕的数字。

凡是马匹被引入一个地方，可以说必然对当地的历史产生极其深远的影响，在古代它是任何大规模高效的军事组织的基础，使游牧民成为一个被组织起来的整体。我们现在因为离远古时代已经很遥远了，无法想象当时马匹被引入草原的时候，产生什么影响。但可以看一些较近的例子，比如说北美本来是没有马的，所以墨西哥的阿兹特克人第一次看到西班牙骑兵的时候，怕得要死，以为这是一种人头马身的怪兽。这实际上是一个步兵对骑兵产生的一种很正常的反应。西班牙人征服墨西哥后，大约 1730-1770 年间，马匹逐渐传到北美西北草原，也就是蒙大拿州一带。马匹引入到当地印第安部落立刻产生重大影响，首先就是大大加快了当地战争的频率。有了马，活动半径大大增加，打仗更方便了，可以袭击更远的一些部落。原来一些很小的部落比如说肖肖尼人，自从有了马匹以后，加上从白人那里得到的枪支，猛然间成长为一个很强大的部落，控制了一大片地区。这些发生在比较近的，有文字记载时代的历史，有助于我们理解当骑兵第一次在欧亚草原上出现时的影响力。

马匹最早应该是在南俄草原被伊朗系的斯基泰人驯化的，他们学会骑马之后就把这个给传播了，之后被东方的匈奴人给继承了。匈奴游牧骑兵形成一个明显的威胁，大概是在公元前 300 年前后。那么在这个时候，我们就看到有一个新的军事革命出现了。以前以畜牧为生的人群和华夏族打的话，基本上是输的比较多，可它有了马匹之后，赢的机会就大大增多了。因为随着骑马游牧的全面化，产生了一个游牧民族最重要的特征：移动性。移动性是游牧民族整个生活的一个核心，这种东西在现代大炮发明之前，几乎是军事上难以战胜的一个非常强大的因素。

在全面游牧化之后，面对这样一支骑马的骑兵，定居的居民大概有三种策略对付它：第一种策略是以纪律严明的步兵方阵对阵，也就是希腊人和罗马人的做法，比如说一百个人排成队，三到四米长的山茱萸长矛对外，手持盾牌，整个方阵就像个大刺猬一样刀枪不入。这样一个步兵方阵是很难抵挡的，但它需要非常严格的纪律来维持，其次行动非常迟

缓，因为它的兵器加上盔甲、盾牌等，人均负荷有七十几斤吧，拿着这些东西跑步，很累很累的，所以古希腊就非常强调体育运动。第二种策略就是建筑坚固的堡垒，当游牧民族打进来的时候实行坚壁清野，让你什么也抢不到。游牧骑兵善于平原上的阵地战、运动战，但不善于攻城。这样的堡垒体系只要足够坚固，你就可以躲在城堡里，对他进行远程攻击，这也是比较有效的。比如普鲁士向东扩张的时候就是在一片无险可守的平原上构筑了这样一个堡垒体系来实行控制。其实，长城也体现了这种堡垒功能。

那么，这两种策略是相对比较消极的，比如说第一种策略，你很难追击游牧民族，步兵比较慢，跑得快方阵型必然散乱脱线；第二种更不必说了，因为城堡不能带着跑。第三种办法，也就是唯一一种可以和它积极主动对抗的办法，就是你自己也培养一支骑兵。这是在游牧骑兵足够强大的时候，定居文明所不得不采取的最后一种办法。在冷兵器时代，此外就没有其他任何办法了。所以战国时有赵武灵王的胡服骑射，到汉武帝时为反击匈奴，又大规模训练骑兵，让霍去病统帅骑兵大举出塞反攻。因为你如果不进兵漠北，攻击它的根据地，就永远没办法从根本上消灭它，它隔三岔五过来抢一次，你没法子，斩草除根的话只有这个，就是直接进攻到他的根据地。

但起初的骑兵也是比较原始的，很重要的一个因素是当时既没有马鞍也没有马蹬。我们现在看来这似乎也没有什么大不了，但你想想看，没有马鞍和马蹬是很要命的一件事，你整个人骑在光溜溜的马背上，只靠缰绳控制不了马，很容易摔下来。要是马跑得快一点，或者两手开弓射箭的时候，马稍微颠一下，很容易就失去平衡掉下来。所以早期的骑兵，骑在马上，一般是射箭，如果用刀枪什么的，击打的时候一碰撞，就会产生一个反作用力，很容易就掉下来。这就是所谓的轻骑兵。

但到了公元 3 世纪前后，可能是北方的鲜卑族发明了马蹬，这又引发了一次新的军事革命。有了马蹬，人可以固定在马背上，拿刀砍的时候就不会掉下来，马蹬产生了一个横向的平衡，马鞍则起到了一个纵向的平衡。这个新发明产生了重大后果，到公元 4-5 世纪“五胡乱华”的时候，在西方是蛮族大迁徙，马蹬的重要性就得到了一次极大的验证，它催生了一种非常可怕的武器，就是所谓重骑兵。以前轻骑兵主要是射箭、迂回攻击，不太和人直接刀枪对抗，但重骑兵就不同了，人也披甲，马也披甲，有速度，有冲击力，还有突然性，你以为它还在十公里以外，结果不到半个小时，已经跑到你面前来了，这很可怕。为了对付重骑兵，很多战术都不得不革新。魏晋南北朝是中国冷兵器大变革的时期，像戈就被废止了，因为它原本是战车时代的武器，一个人站在战车上，拿着戈，它是那种丁字形的，你把他钩下来，再刺死掉；到了重骑兵时代，这种战术就没用了，因为你钩不下来他，他力量大、速度又快。所以新的武器就开始出现：一种是大刀，一种是尖锐的矛，就是枪，开始登上历史舞台。枪要足够锐利到能刺破铠甲；大刀砍下去，要能够砍得破。所以就产生了一场军事革命。

#### (四)

游牧民族的这种依靠马匹的移动性，在军事上又引发了一系列重要后果。除了我刚才说的这种力量、速度、突然性以外，它还不需要粮草补给，这也是很恐怖的一个特点。游牧民族在进攻的时候，可以把很多辎重，也就是一些后勤装备，扔在 200 公里外，什么概念？就是他可以把许多觉得累赘的东西扔在杭州，自己骑着一匹马快速突击，跑到上海来打你。这种东西是定居民族很难防备、无法抵挡的，因为你整个防线总有弱点会被突破。定居民族始终是非常依赖装备的，现在国防部还专门设置后勤装备的部门。三国时著名的“官渡之战”，就是曹操先把袁绍的粮草烧掉，这样袁绍就打不下去，只好撤退，否则数十万大军没有粮草，就面临饿死的危险。汉语里也常说“大军未动，粮草先行”，就是强调打仗必须先确保后勤供应。可是游牧民族没有这一说的，这一点很可怕，它可以随时突然袭击你，然后到了某地后就地取材，解下马匹，让马自己去吃草。他们自己携带的干粮之类的都很少，很忍耐饥渴。

它没有后勤，那你就不能通过截断粮草或交通要道这样的方式把它给灭了，因为它也没有道路。如果大家去过草原就知道了，草原上是没有道路可言的。这就像大海上一样，大海上有所谓航道，其实不是严格意义上的道路。中国内地农业地区，始终是要有道路的，没有道路，军队怎么开过去，而且隔一段时间就要占领这个道路，控制它、修复它，要不然大军就无法通行。但在草原上，无需修路，也没有道路可言，它打到哪里就是哪里，就和海盗一样，海盗其实也是一种完全机动的力量。对付这种机动力量，定居居民都是比较头痛的。

中国以前对北方民族的突击，都很短暂，像霍去病北伐之类，大概都是带十天左右的干粮，五天来回，如果你一天骑两百公里的马，你就只能突击一千公里，一千公里到了，就必须往回撤，再往前赶，没有粮食，就得死。这就和以前朝鲜战争一样，志愿军往南突击，突击到一定时候，就必须回撤，要不然军火、粮食都没了，那太冒险了，所以那时候美军称志愿军的这种打法叫“礼拜攻势”，只能打一个礼拜，一个礼拜后必须往回撤。中国古代打游牧民族也和这个类似，最长的记录大概不超过 90 天。历史上唯一的一次突破，大概就是唐朝初年的大将苏定方，他在平定西突厥的时候，出兵超过四个月了，但他的办法说穿了也不稀奇，就是采取了游牧民族的补给方式。所以说蒙古军队为什么能一直打到欧洲那么厉害呢？说穿了也很简单，它无需补给，是就地补给的，打到一片地方，放下来，让马吃草，自己就喝一点马奶，实在没办法的时候，从马脖子上放一点血出来，喝马血就好了。当然还有就地抢劫所获的食物。

从亚洲向欧洲入侵的游牧民族，一般都以匈牙利那边的潘诺尼亚草原为根据地，向四面扩张，不论阿提拉、阿瓦尔人、蒙古人，都是这样子，为什么呢？因为这是最靠近西欧的一个大草原，再往西就没了。内亚史学者塞诺曾对此解释说，游牧骑兵不能在匈牙利以西稳定扩张，是因为没有草原的支持，那它的骑兵就像二战时德国坦克没有汽油的支持，过一段时间，它也得放到草原上去补给，否则马匹就会变弱或者死掉，因为长期吃不到那些良好的牧草；如果不退回去，那就得接受当地的生活方式。因此这也是他们扩张的一个极限，所以我刚才说这两种生活方式或组织原则之间碰撞，最终能达到一个动态平衡，是因为彼此都有一些不能克服的障碍。

那么，我刚才讲，这个移动性，在军事上是很有利的；但在历史上，当它被引入定居文明地区时，却产生了一些非常可怕的弊端。举个例子，好多人看过《天龙八部》，萧峰在那个宋辽边界上看到契丹人在打草谷，这是什么东西呢？当时的辽朝军队，它是游牧军队，没有后勤，没有粮草，到一个地方就打劫那个地方，通过大肆劫掠来补给，这在行军上来说是最好的办法，就是《孙子兵法》上所说的“因粮于敌”；但问题在于，反复劫掠对社会的破坏性极大，“打草谷”成为辽朝一个很大的弊政。游牧民族还有一个东西，在草原上也是比较行之有效的，就是它的这个组织结构不设置固定官僚，所以像拓跋鲜卑建立的北魏王朝，是中国历史上唯一一个官员没有俸禄的王朝。我们现在看起来很奇怪，你让这个人做官，却不给薪水。这是为什么？因为在游牧民族观念里，是没有薪水这个概念的。这也造成了一个很大的弊端，这群人到当地后，就会大量搜刮当地的百姓，这种搜刮被政府是认为合法的，因为他没有合法的薪水收入。蒙古人统治俄罗斯的时候，任命的官员也没有薪水，他们的主要任务就是帮助强制征税和追捕逃犯，莫斯科大公国就是靠这个起家的，因为征税取决于军队的力量。所以有一些东西，可能在游牧生活里是完全许可的，但当它被引入另外一些定居民族的时候，会产生一些意想不到的政治后果。另外在草原上，早期游牧民族是没有专制王权概念的，首领不是一个必须服从的天神一样的人物，只是一个勇士，我追随他不过是为了追随一个事业，从中我自己也能得到一点好处。这种观念在很多英雄史诗中最明显。所谓英雄形象经历过好几次转变，最早的英雄是比较勇武有力的人物，后来形象变成了有智慧的人物，再往后可能就是一个有钱的人物，比如我们现在看比尔·盖茨。早期游牧民族观念中的英雄得是一个武士，勇敢、慷慨，但他的力量是个人的、未必可以遗传，因此当某个首领死了，他的子孙往往得不到下属的服从。因为很多游牧民族服从的只是那个个人，那个英雄死后，他的事业也就解散了。甚至他还没死，只是遭遇了一次严重失败，他的力量突然就土崩瓦解了。就好像一个临时组成的团队，首领失败或死掉后，大家

就全都鸟兽散了。所以，它起来的时候很快，消亡的时候也非常快，突然之间就没了。定居民族要求比较稳固的政治组织，有遗传性、继承性，子孙后代，世世代代大家也还服从他。游牧民族不是这样，即使历史上最受尊崇的成吉思汗黄金家族，他们的人照样会被人杀掉，比如明初鬼力赤杀了北元皇帝，他自己做了首领。他没有弑君这样一个概念，弑君只是代表着那个人已经不是最强有力的了，现在最强有力的人就是能杀死你的这个人，也就是我。

力量的起伏常常是不稳定的，因此游牧民族的政治非常动荡。一个王室很少有超过两百年的稳定性，往往一个朝代还没衰落，离心力就开始出现了，权力的转移也比较快。但这也有一个好的地方，就是能阻止部落首领对部属滥用权力，否则部属很可能马上就会离开。像札木合和铁木真在十三翼之战中，铁木真当时是失败的，但札木合战胜后却表现太残酷，把所有的战俘都杀死了，在大锅里烹煮。结果很多部属对他不满，大批离开这个胜利者，去投奔铁木真了：一个人战败了，他反而赢得了民心。游牧民族的生活方式到处都很相似，但部族的整合却很严重，因为它的流动性太强。比如蒙古时代的乃蛮部，实际上是突厥人的一支，后来被并入蒙古，但现在呢，这支乃蛮人又出现在哈萨克族里面。所以，游牧民族的认同感，和定居民族是不太一样的，它的认同感更多是基于生活方式本身，以及对于一个比较能够建立稳定关系的群体的认同，这种认同是动态的，不是静止的，也是这种动态，造成了历史上在很多我们看来很难理解的东西，你会发现这个民族一会儿出现，一会儿没了，一会儿又变成另一群体的一部分，你就不知道它是怎么变换融合的，它进行着一个非常复杂的动态过程。

游牧民族的这种移动性，也促进了文化的传播和融合。这对历史也有重大影响。比如说中国历史上对外有三个主要称呼：一是我们现在最熟知的 **China**，一个是中古时期在伊斯兰世界，它是以“桃花石”来称呼中国的；最后是蒙古帝国时代的新词汇：**Kitay**，现在的国泰航空 (**Cathay**) 也是源出于这里。这三个词呢，我个人认为都是游牧民族传播出去，而且三次传播都是和世界历史上游牧民族的三次崛起有关，即月氏/匈奴人、突厥人、最后是蒙古人的崛起。

中国古代对西方的文化传播，很多时候是由游牧民族来担当执行的；著名的丝绸之路上，来来往往的其实绝大部分都不是中国人。除了马蹬以外，火药、造纸、印刷术等等，都是游牧民族通过一环一环的中介传递出去的。中国古代有两个出口：海洋和草原，草原实际上就是内陆的一片海洋，是全开放的一个空间，也是一个无限流动、充满动态的空间。要控制这片地方，就像制海权一样，必须有一个制草原权，要一个机动的力量。就像海岸的要塞舰队是无法夺得制海权，必须有一支机动的远洋舰队。同理，要控制这片草原的话，也必须有个机动的骑兵部队，这也就是为什么定居民族始终不能有效控制这片草原的根本原因。在这种全开放流动的空间，交换啊什么的都非常开放，容易产生融合的意识，因移动性使游牧生活方式具有无可置疑的同质性。而且游牧经济本身就带有交换的性质：和平的时候，它体现为贸易；战争的时候，就体现为掠夺，也就是布罗代尔所说的强迫交换。在这个交换的过程中，有许多文化的传播就得到了很开放地进行。

## (五)

游牧世界的开放性与长城以内农业文明的封闭性恰好形成鲜明的对比。两者的对峙，实际上是两种生活方式和社会组织原则的竞争。它们彼此竞争无法相容，其统一是一种对立统一，所以就形成一个既对立又相互依存的关系，其中一方很难彻底消灭另一方。长城像所有的边界一样都是冲突的产物，游牧民族的存在对中国有一个非常重大的意义，就是它对中国民族主义的影响，它是中国古代史上最主要的他者。关于两者的隔阂冲突，王明珂的《华夏边缘》讲得很好，他认为这对游牧民族和汉民族的族群建构都产生了很重要的影响。族群建构实际上就是你把自己想象成一个什么样的人，它是想象和建构的产物。我

们这个国家的民族性格，是由一个长期冲突的过程所限定的。因此，长城外的游牧人群的存在，为长城内中国文明的价值体系的巩固和确立提供了动力。

现代族群认同理论还必须回答另外一个问题：你为什么把自己想象成这样？就好比我们经常说自己是炎黄子孙，那你为什么把自己想象成一个炎黄子孙呢？这似乎是自然而然的，但实际上没有什么是自然而然的事。之所以这样，是因为你所属的群体长期和另一个族群产生冲撞。个性是冲突的产物。这种案例在历史上非常多，像德法之间持续一千年的恩怨，以及英法百年战争，分别塑造了相关族群的认同。在英法百年战争中也有一些很讽刺的例子，当时有英国大臣提出在议会必须讲英语，但这个提案的人是什么人？他本身就是个法国贵族，讲的是法语，因为当时是诺曼底征服之后，英国的上层贵族都是法国人，他们的目标是争夺法国的王位，但在集体冲突的过程中，就产生了一个现象，Charles Tilly称之为类型塑成。

类型塑成包含两个过程，首先是边界激活，也就是毛主席说的斗争首先是区分敌我，先把人分成你和我两群人，就像我们近期有人很激烈地把人群划分成两类，一类是爱国的，一类是不爱国的。这种简单的划分加剧冲突，冲突的升级又进一步巩固自己的身份认同，使它升华：因为有人攻击我这个爱国的立场，那么我就要更加爱国。就像以前中日战争，日本越是想灭亡中国，我们就越要加深对中国的认同，“用我们的血肉筑成新的长城”。另一个术语叫做“伤害性互动”，仍以中日战争为例：以前也许会说，中日是兄弟，同宗同种之类，但等到仗打起来，好了，日本人认同日本，中国人认同中国，没有中间立场，冲突越激烈，持中间立场就越困难。凡是存在这种伤害性互动的地方，常常都要伤害到很彻底为止，彻底到什么程度？就是这种认同，巩固到你身为中国人就是中国人这种程度，没有第二种可能。就是这样一种逻辑的最终范式。在这个伤害性互动的世界里，恰恰最充分体现民族主义的立场，最终导致身份认同的固定化以及现代民族国家的建立。

在这个过程中，最终造成了一些比较不幸的后果，当然也有好处。比如现代化最终需要一个权威来推动的，现在已经证明民族国家就是这样一个比较适合的工具，一个权威。悲惨的是原来那些左右逢源的族群，像犹太人和吉普赛人。犹太人早期虽然在欧洲各国都间歇性地受一些歧视，但它还是有自己生存空间的，到了选边站的时候，它就从左右逢源变成里外不是人了。还有像黎巴嫩，这个国家面积还不到海南岛的 1/3，但却有 17 个族群，民族和宗教上都不一样。这个国家在现代自我认同没有那么强烈的时候，是比较和平的，被称为东地中海的十字路口，各个族群、文化、宗教、货物都在这里交汇，大家都有活路。纽约也是，一个国际都市，有来自超过 120 个不同国家的人，大家都活的好好的，一切都蛮和平。可是有一天，边界激活以后，这种地方就是最可怕的地方。黎巴嫩已经打了三十多年内战，至今难以平息，为什么呢？因为这 17 个族群都追求自己一个最清晰的民族身份和民族认同，17 个族群在这么小的地方打起来，想想看是一个什么样的后果。因为没有任何一个族群可以力量强大到能够控制整个地区，所以打得不可开交。托马斯·弗里德曼的书里曾说：“在贝鲁特没有任何真相，只有各种说法”。实际上，即使没有 17 个族群，只有两个族群冲突，也照样会出现这种情况。没有真相，各有说法，你有你的一套说法，我有我的一套说法。

在分析游牧民族对中国历史影响的时候，历史文献当然要看，但必须通过批判性反思，包括运用东方学、族群认同理论。我们的政治话语一直都讲，说中国人多么爱好和平，郑和下西洋也没海盗行径。但这是政治语言，事实上中国人没那么爱好和平。中国长期存在一个对游牧民族妖魔化的过程。从最初农业和游牧分离时起，以畜牧为生的人群是被汉人用武力逐出长城，等它全面游牧化之后，就产生了一种平民战争的特点。就像自杀性爆炸一样，就是主体和客体、受害者和加害者是统一的，是一体的。当你被逐出长城的时候，是一个受害者；现在反过来又以加害者的身份施加暴力，来做一个孤注一掷的斗争。历史上西汉之前，中国和北方畜牧民族的冲突是若断若续的，比较零星，而且定居民族赢面也比较大，但是等它全面游牧化之后，我们就越来越打不过它了，而且强度越来越激烈，为什么呢？除了伤害性互动和游牧骑兵的军事特长外，还有一点，就是你控制的东西越多，

你无法控制的东西也越多。正因为你通过长城来控制了一片地区，才造成了许多无法控制的局面。

这在现代很多的暴力事件中也可以看到。像 1960 年代，美国的警察通过提高装备、纪律等，加强了对黑人群体暴力的一些约束，但这种控制的强化，后来造成了什么样的结果？这些群体分散化、游击化，暴力形式更加极端。当然他们不是游牧民族，但集体行动的原理是一致的。游牧民族某种程度上跟中国内部的移动群体是有点像的，只不过游牧民族是外部的移动力量。内部的移动群体是什么？就是流民、游侠、江湖人士，最早称为“流氓”——流氓现在变成一个骂人的词了，但最初的意思是不定居于土地之人，对土地没有依附感，走来走去。从这个意义上说，我们也是流氓，因为我们不肯定居在一个地方了，现代社会都具有很强的流动性。流民的某些特点也和游牧民族族群冲突时类似，即只分敌我、不问是非。像《水浒》里梁山好汉攻打祝家庄之类，其实两边的所作所为差不多，但梁山可以这么做，祝家庄就不行。

自古以来，行政机构就想通过种种方式，要控制这种流动力量、希望你定居；最好不要动，动我就要想办法治你。通过种种方式，暂住证啦，身份证户籍制度啦，文牒啦，护照啦，要出关出国，得有证明，画押担保。所以当年，唐玄奘和鉴真和尚一个去西域，一个东渡，其实都是违法行为，因为他们没有出关的文书，是偷渡的，按唐朝法律要判刑。这种努力到近代就更变本加厉了。像英国在 1572 年发布过一个法令，认为各种流民或盲流，变魔术的、补鞋匠、游吟诗人之类，统统都是不法群体，如果没有两个以上治安官的准许的话，就要抓捕派遣。流动人口管理一直是政府很头痛的。要实现数目字管理，怎样最方便呢？当然让那个人固定在那里最好。比如说一百人，排成一个方阵，整整齐齐，我一个个数过去，很方便的，也好找，但如果这群人跑来跑去，怎么数得清楚，管也不好管。所以现代化管理，通过韦伯说的工具理性，就对人和物实行了一种机械的官僚管理，征服偶然性和无序，使一切固定、秩序化，这一点是从定居文明的思维里演变出来的。

## (六)

这种秩序化、固定化的努力，最终压倒了游牧民族的移动性。移动性的消亡，也就意味着游牧特性的消亡。相传奥斯曼帝国的始祖曾说：永远要移动，不要停下来。蒙古帝国建立以后，成吉思汗虽然死掉了，蒙古帝国也崩溃了，但崩溃以后，蒙古高原上并没有出现一个新的族群。比如说，匈奴人走了以后有鲜卑人出来，鲜卑人之后有突厥人出来，突厥人走了之后有回纥人出来，回纥人走了之后又有契丹人、蒙古人出来，可是蒙古人没有走，它后面也没有再出现另一个民族，它现在就变成蒙古高原的一个主体民族，为什么呢？因为蒙古人慢慢地固定下来了。

这一固定，我想有两个最强大的因素，一是喇嘛教的传入，这个因素经常被忽视。喇嘛庙和游牧生活中别的东西不一样，它不能卷在帐篷里带走，寺庙提供了一个固定的场所，成为分散的人群汇合的一个点。汉人村庄的人群汇集点常常是集市，南欧的希腊罗马一般是广场，一个开放性的场地。在欧亚草原，起类似作用的是教堂或喇嘛庙，所以像俄国、西藏还有蒙古，最初的城镇都是围绕一个宗教中心建立起来的。甘南的拉卜楞寺，县城就叫拉卜楞镇，原先寺庙比这个县城还要大。那么随着寺庙的建立，慢慢就形成了一些固定的群体，或者说，形成了一些比较固定的朝拜场所吧。这是一个因素。另一个因素就是通过一些政治措施。以前，中原王朝一直无法控制游牧民族，直到满清出现。现在大家都骂满清骂得很厉害，但满清其实对中国做出了极其重要的贡献。没有满清，中国现在领土至少要少掉一半；它一个很重要的成就就是把蒙古人给固定下来了。它采用了几种方式，第一是跟蒙古贵族联姻；第二是划分牧场，划分牧场是怎么回事？以前是可以迁徙的，可以去一千公里以外放牧，但等满清出现以后，它就把这个固定下来了，圈起一块，划清界限，你不能擅自跑到别人的牧场放牧。它可以防止两边因牧场纠纷引发的部落冲突或战争，可能也是它的初衷。游牧人的战争，主要的起因就是草场和马匹的争夺。但牧场划分后，就产生了一个极其重要的政治后果，就是这些人移动性大大减弱，慢慢甚至开始定居了，原

来的蒙古贵族就变成领主。此外，他们的纠纷是由清政府仲裁的，而不再通过武力仲裁或暴力迁徙的方式来实现。这就阻止了一个蒙古人中最高权威的出现，就是不可能再出现第二个成吉思汗了；噶尔丹想做，失败了。

移动性弱化后，蒙古领主就逐渐蜕变成地主。有一本《蒙古民间故事选》，里面的故事基本有两类，一类是歌颂勇士，多半是个神箭手，赶走了多少妖魔。第二种就像嘎达梅林这种，反抗或讽刺领主的，汉人读起来会觉得很有趣，因为它对领主的控诉，和汉族农民对地主的控诉非常相似。满清贵族和蒙古贵族的联姻也产生了一个政治后果，就是这些蒙古贵族要搜刮大量的钱财来娶清朝的格格，导致很多蒙古贵族破产，他这个老婆实在太贵了，所以，不少蒙古牧民对这些格格恨之入骨。

当时还有一个很严重的问题，这些蒙古贵族有这片草原的使用权和占有权，但没有所有权，所有权是属于中央政府的，这也很有命，就是我一开始讲的，游牧民族经常缺乏经济学上的所有权或私有观念。我再举个例子，余纯顺当年到川西，路过一个兵站的时候听士兵讲，以前他们晚上放电视的时候，周围的藏民就跑到兵站来看电视，看得兴高采烈，大声喧哗，不把自己当外人，走的时候顺手就把什么东西拿走了。时间长了，这些汉族士兵就受不了了，之后他们就修了个围墙，把这个围起来，如果藏民要进来的话，就先讲清楚，不要随便拿东西，那时间长了，这些藏民就觉得很不舒服，你们为什么这么小气啊？我们对你们也都是要什么随便拿嘛。他没有这种观念、概念，所以不明白自己的做法有什么不对。你维护私有观念相反引发了冲突升级。

这种观念也是产生了非常严重的历史影响的。我们认为长城圈起来的地方，就是汉人的地方，我们生生世世就生活在这里，天经地义。但是从游牧民族角度来说，谁给你这个权力把它圈起来呢？这原本是共同财产，不是你私有的，任何人都有权使用。法国中世纪也曾把树林等圈起来，结果产生了农民的偷猎行为，政府就予以惩罚。从这些盗猎农民或游牧民族的角度来看，偷猎或劫掠的行为，不仅仅是一种生存策略，它也是一种自然权利的体现。为什么我说是一个自然权利呢？因为任何边界，实质上都是一个政治范畴，或说社会认知范畴，你认为它是一个边界，它才是一个边界。作为游牧民族来讲，我不认为这是个边界啊，我认为这只是你有意与我为难，故意制造一个政治障碍罢了。所有划分的政治界限，都是一条人为的虚线，是你脑海里这么认为。举个例子，大家坐车从高速公路出上海，过收费站，到浙江了。可是如果没有这个收费站的话，你根本就不会觉得自己出上海了，因为这条边界完全是人为虚构的。

拿动物界来讲，鸟类的迁徙、鱼类的迁徙，或者说马匹的迁徙也好，对它们来说是完全没有任何界限的。它没有这个概念。所以界限是一个社会实践的问题。就像西双版纳大象袭击人或老虎吃人，道理也一样。对这些动物来讲，它只是谋求自己的一种自然权利，你如果要逼迫我，那我也被迫对你展开生存竞争，直到把你这道围墙打烂为止，把你的边界破坏掉。它完全是开放式的。所以说这也是暴力冲突的一个起源。

这种对私有观念的淡漠和自然权利的观念，当定居文明入侵游牧民族领地的时候，就变成它非常致命的弱点。历史上荷兰人、英国人到北美洲，拿一些很廉价的珠子之类从酋长手里换了一大片土地，曼哈顿岛也是这么换下来的。俄国在西伯利亚扩张时也一样，拿几瓶烈酒，就换得了大片领土，等当地酋长酒醒过来，土地已经不是他的了。为什么会出现这种状况呢？不是他们愚蠢，为了极小的利益来出卖自己的生存空间。问题在于，当时这些草原居民缺乏这个概念，他以为只是大家友好交换一下，我允许你住下来，这个地方这么大，为什么不能让你住呢？等到有一天他突然发现，当他签了这个条约以后，这个地方就不是他的了，他从此就不能住了，我想他的第一反应是很恼火，然后想：好，我讲理讲不过，那我就暴力夺回来。到最后暴力又打不过人家，被打得很惨。这种吃亏是因为双方信息严重不对称，且话语霸权在定居民族手里。晚清和民国初年，很多汉人向北移民时也产生过类似现象，汉人把蒙古王公的大片土地给买下来了，订下契约后开垦，开垦完了就说这是我的了。以色列人对阿拉伯人采取的方式也是这样的。因此游牧民族定居了，不再移动后，又遇到一个更糟的情形：这片土地不是他的了。

以前，在移动的世界里，游牧民族如果定居下来，那就等于是自杀。一场暴风雪过来，他无法抵挡，最有效的抵抗方式就是移动。司马迁在《史记·匈奴列传》里写，匈奴人“不羞遁走”，逃走就逃走了，不以为耻。而农业文明的观念，汉人也好，罗马人也好，首先就是这块土地是我的，我要坚守到底，为每一寸土地流尽最后一滴血。这种原地坚守的观念在游牧民族看来蠢得要死。他们认为，你要避开一个敌人保全自己的最好办法，就是跟他脱离接触，他打不到你，你就安全了嘛。为什么要定在一个地方？对他来讲，固定在那就等于是自杀。所以 11 世纪匈牙利文献有一段记载，一个游牧民族首领给当时的匈牙利王公写信说，你们这些人住在城市里，等我们杀进来的时候，你们往哪里躲？又不像我们游牧人，能很方便地迁移到另一个地方。这是很典型的游牧人的观念，就是它认为定居下来是对自己不利。

定居当然也不完全坏，比如牲畜能有一个躲避暴风雪的场所，抗击天灾能力增强了，生活也改善了，但也产生了一系列很严重的后果，就是社会的奴化以及草场的退化。以前游牧的时候，放牧到一个地方，一块草吃得差不多了，马自然会到另一个地方去吃。现在定居了以后是把草割下来放在圈里，所以经常会放牧过度，然后草场退化，造成一个恶性循环。由于对游牧生活方式的不理解，我们以前很少考虑它对环境的影响。1962 年谭其骧先生曾说，他对东汉以后黄河出现一段长期安流的局面，曾长期百思不得其解——几百年内黄河没有决口。后来他发现那是因为游牧民族入侵，农业人口死掉一大片，剩下的地方也杂草丛生。从汉人的角度来看，杂草丛生，多荒凉啊，但从一个游牧民族的角度看，杂草丛生不是更好吗？生态在恢复。

对土地利用的冲突也是宋朝一直为什么打不过契丹、蒙古的一个很重要原因。北宋时中原人口已增长到一个高峰，大概是唐朝最高值的一倍左右。这就要开辟各种各样的土地资源，精耕细作，尽量利用，梯田最早就是从宋朝开始开发的。这样对土地当然寸土必争。当时中国两片最好的养马地区，东北被契丹占领，西北被西夏占领。剩下的地方，如果要放牧，代价非常大。宋朝军队骑兵只占 5% 到 10%，很少的，原因之一是养马太不合算了，土地资源太珍贵。放牧一匹马大概需要多少草地呢？大约 720 亩，720 亩什么概念？整个上海是 6000 公里，只能养大约 12000 匹马，差不多到承载极限了。你想想，整个上海空掉才放牧 12000 匹马，这有什么经济效益？所以农民都不干。北宋政府曾经采取了很多措施来鼓励农民养马，王安石变法里也有这样的措施。但农民不愿意养马，除了占用的土地太大，马还会经常啃食庄稼。《诗经·鲁颂·駉》就说到，农田在中心，马匹要到很远的林外放牧，免得影响农业生产；现在没有那么多空地放马，大家积极性就很难提高。即使养马，没有良好的牧场也养不好。而定居社会要进行军事化动员常常会严重破坏生产过程，这个问题在游牧社会却几乎不存在。

古代战争中，马匹的重要性，就好比现代战争中的坦克。想象一下，一个人骑着一匹高头大马，马本身就几百斤，批带装甲，以高速度冲过来，哪怕骑兵没有兵器，那个冲击力也足以撞飞你。所以要在运动战中击败骑兵，冷兵器时代最好的办法就是骑兵对骑兵。但枪炮发明后形势大变。标志着游牧民族军事力量彻底衰落的，在西方是 1683 年，土耳其军队进攻奥地利，在维也纳城下战败；在东方则是 1693 年，康熙帝在乌兰布通战役中用大炮打败了噶尔丹。大炮出现以后，骑兵的力量被大大削弱了。炮作为远程武器比弓箭更具决定性。游牧民族原本最有力的军事力量，一是马匹，一是弓箭，现在这两个都被取代了，因为定居民族发明了汽车和枪，这两个要强得多。所以 18 世纪后，游牧民族就逐渐离开历史舞台的中心了，其中最主要的原因，一个是刚才所说的军事力量的衰落，第二个就是前提到的移动性的消亡，而两者又是关联性的。

维舟，广告人，任职于上海某公司。

*Zhou WEI works in the advertising industry in Shanghai.*

# The Implementation of China's Anti-Monopoly Law: A Case Study on Coca-Cola's Aborted Acquisition Attempt at Huiyuan Juice

## 中国外资并购的反垄断法实施 —以流产的可口可乐与汇源并购案为例

Jin SUN

(孙晋)

[ABSTRACT] Built as part of the legal foundation for China's market economy, the country's Anti-Monopoly Law (AML) became effective on August 1, 2008. After the review process for half a year, Coca Cola's merger case with Huiyuan Co. was denied by the Ministry of Commerce. It became the first failed case since the AML was implemented and generated much attention both in China and abroad. On one hand, foreign-related M&As have brought money, technology, and managerial experiences to China and promoted economic development; on the other hand, they have also hurt competitions in related markets and led to the disappearance of some national brands. The author argues that the Coca Cola-Huiyuan merger case should be perceived from two perspectives. Merger and acquisitions have advantages and disadvantages, and therefore law enforcement agencies for anti-monopoly issues should not only pay attention to their damages to competition, but also their contributions to economic development. Only by balancing these concerns can a reasonable conclusion be reached and the authority of law maintained.

[内容提要] 作为中国市场经济体制基石的《反垄断法》(AML)于2008年8月1日开始实施。美国可口可乐公司收购中国汇源公司一案历经半年审查,2009年3月18日以我国商务部宣布禁止收购而告终,成为《反垄断法》实施以来首个未获通过的案例,在国内外引起巨大反响。外资并购一方面给中国带来资金、技术和管理经验并促进经济的发展;另一方面也造成外资在我国垄断相关市场损害竞争并导致部分民族品牌消失。作者主张应该从正反两个方面看待可口可乐并购汇源案,并购有利有弊,反垄断执法机关不仅应该关注并购对竞争的损害,还要关注其促进经济发展的作用,权衡利弊才能得出合理的结论,并维护法律的权威。

### Introduction

China's Anti-Monopoly Law, part of the legal foundation of its market economy, was implemented on August 1, 2008. After half a year of investigation, the Ministry of Commerce put a stop to Coca Cola's acquisition of Huiyuan Juice on March 18, 2009. It became the first aborted case since the implementation of the Anti-Monopoly Law and caused strong repercussions in home and abroad. While Chinese nationalists applauded for the decision, overseas media generally took a skeptical attitude, considering it as a case of trade protectionism. This phenomenon requires a rational interpretation and guidance for the domestic and international

media. On one hand, acquisition by foreign capital may bring advanced technology and management experience and promote economic development; on the other hand, it may lead to the monopoly of relevant market, hamper competition and cause some domestic brands to disappear. I maintain that we should look at Coca Cola's proposed acquisition of Huiyuan Juice from two aspects. There are both advantages and disadvantages in acquisition. Anti-Monopoly law enforcement agency should not only pay attention to the damage to competition brought about by acquisition, but also to its positive role in promoting economic development. It should balance the pros and cons so that it can reach a rational conclusion and maintain the authority of law. I think the society should take a balanced attitude to acquisition by foreign capital, and prevent nationalism from spreading unchecked. I also hope that the international media would not overreact to this case, which could become the excuse for other countries to practice trade protectionism. The Chinese government simply made a misleading yet not wrong decision in a wrong place at a wrong time.

## **1. The case of Coca-Cola's attempted acquisition of Huiyuan Juice**

On September 3, 2008, it was reported that a wholly owned subsidiary of Coca-Cola Company ("Coca-Cola") intended to acquire all equity interest in Huiyuan Juice Group Co., Ltd. (1886.HK) ("Huiyuan"), one of the largest companies in China that produce fruits and vegetable juice, for a total amount of 179,200,000,000 HK dollars (2.4 billion US dollars). If this 2.4-billion-US-dollar deal could be completed, it would become the largest acquisition in the history of Chinese food and beverage industry, and it would also become one of the largest acquisition cases in China's domestic market over the past several years.

Coca-Cola submitted the application materials to the Ministry of Commerce on September 19. After six months' investigation, the Ministry of Commerce eventually announced the decision of denial. When reviewing this case regarding concentration, in light of *The Anti-Monopoly Law of the People's Republic of China (the "Anti-Monopoly Law")*, the Ministry of Commerce has taken the following factors into consideration: market share in the relevant market of the undertakings concerned and their ability to control the market; concentration degree of the relevant market; effect on the market entry and the technology improvement; effect on consumers and other companies concerned; the brand effect on the competition of the juice industry and so on. In sum, the Ministry of Commerce confirmed that this acquisition would have a negative impact on competition. By concentration, it is possible that Coca-Cola Company may take advantage of its dominant market position in the carbonated soft drinks to bundle fruit juice drinks, or to set other exclusive set of transaction terms so as to restrain the competition of fruit juice drinks market, so that consumers may be forced to accept products of higher prices and fewer types. In the meantime, due to the restrictions to the market entry of the existing brand, it is less likely for the potential competition to eliminate the effect of restriction. Additionally, the concentration will squeeze the living space of the small and medium-sized enterprises and bring some negative impact on the competition pattern of the juice industry. In order to reduce the negative effects on competition, the Ministry of Commerce has subsequently conducted a negotiation with Coca-Cola in regards to additional restrictive conditions, requesting Coca-Cola to put forward workable solutions. Coca-Cola expressed its own views about the issues raised by the Ministry of Commerce and put forward some initial solutions and modified proposal. After assessment, the Ministry of Commerce concluded that the revised proposal was still ineffective in reducing the negative effects on competition after the concentration of market shares. As a result, the Ministry of Commerce made the decision of denial in accordance with Article 28 of the Anti-Monopoly Law. Shortly afterwards, it aroused extensive discussions and a variety of voices,

among which the attitude of the foreign media was particularly worth pondering. The major financial media, such as *The Wall Street Journal*, Reuters, *Financial Times*, the Associated Press, Bloomberg, took up almost the same stance, saying that this was a conduct of trade protectionism. The Ministry of Commerce and the Ministry of Foreign Affairs made an announcement not to accept this accusation. This case, China's first antitrust acquisition, quickly provoked much discussion in the international and domestic world.

According to the data collected, since 1990s, the global M & A cases have been increasing at a rate of 42% per year, which is equal to 11% of the World GDP. In 2004, the transnational M & A cases grew by 28%, and worth 381 billion US dollars. At the same time, China's oil, mining, automobile, and computer manufacturers/enterprises have also gone out of the country in recent years to invest, to hold stocks of and even acquire overseas enterprises (particularly in year 2008, the oil and mining companies displayed a good performance in the overseas investment in mergers and acquisitions. For instances, Chalco has inserted 19.5 billion U.S. dollars to become one of the shareholders of Rio Tinto, and the Minerals and Valin have completed overseas M & A as well). Transnational investment has become a big trend. The time of China's accession to the WTO is also when the fifth global acquisition took place, which is characterized by transnational mergers and acquisitions. China's economy gets further involved into the world market. Then a large scale of foreign capital enters China, resulting in lots of transnational acquisitions in China, for example, Carlyle has acquired Xugong, Johnson & Johnson has acquired Dabao, just to name a few. Some very famous domestic brands, such as Meijiajing, Zhonghua, Lebaishi and Xiaohushi even disappeared after the acquisition, so Chinese people are quite worried about the transnational acquisitions. Therefore, foreign mergers and acquisitions have attracted great attention from the Chinese society. People not only feel wary of mergers and acquisitions of the foreign corporations, but also have doubts on our government's too loose control of mergers and acquisitions. At the same time, in the international financial crisis, the trade protectionism in major countries like the United States and Europe has been on the rise, and the distrust and precaution between countries tend to heighten. That the Huiyuan acquisition caused such a huge response both in domestic and international world was closely related to this unique international background.

## **2. The Dual Impact of Foreign M & A on The Chinese Market**

The duality of the impact of foreign M & A on the Chinese market manifests in two aspects:

In the first place, foreign M & A, as a kind of M & A, has its fundamental characteristics, that is to say, acquisition is a double-edged sword to competition. Dated from the time of Adam Smith, hundreds of years' practice has repeatedly proven that market competition is the best means of social resource allocation. This has been regarded as a supreme axiom in the effective functioning of market economy. On one hand, foreign M & A can have positive effect on the market competition, for example, the acquiring company acquires a target company that is in difficult situation, or it forms effective competitions by way of merging with other domestic companies; foreign M & A can also challenge the established monopoly of domestic enterprises. On the other hand, foreign M & A can be used to weaken or restrict competition, and can make the economy power over-concentrated, which may easily create a monopoly market structure, and even worse, it may endanger the national security.

Secondly, foreign M & A has dual impacts on the development of national economy as well. China has introduced the advanced technology and managerial experience through the

introduction of foreign capital, which has promoted the economic system transformation and economic development; but in the process of introducing foreign investment, especially in the foreign M & A over the past few years, problems such as excessive dependency on foreign capital, the formation of monopoly in the domestic market, or elimination of national brands might be generated.

### 2.1. The Negative Effect on the Market

Specifically speaking, the negative effect of foreign M & A mainly manifests in the following two points:

Firstly, foreign capital has entered China by the way of acquiring leading companies in domestic market, which has become the most popular approach that foreign investors undertake investment in China. Most people are worried that foreign companies, with their strong financial support, advanced technology and management, will easily defeat their Chinese competitors and become monopoly in the market.

According to the practice of China, foreign M & A has showed four characteristics since 1990s: 1) The foreign companies begin to seek dominant holding status, for instance, Kodak America holds 70% of China's film market after its M & A towards companies in China. 2) Regional, industry-wide and group-wide M & A is not uncommon any more, such as the car industry and the pharmaceutical industry. There are 7 companies in which the foreign companies have over 51% share holdings, and among the biggest 13 companies in China's pharmaceutical industry, 5 companies are held by foreign companies that hold 50% of their shares, only one of the companies is held by China itself. 3) Foreign companies have turned their targets on the most influential Chinese companies in each field. Carlyle America used 375 million U.S. dollars to acquire 85% of Xugong's shares; German Schaeffler spent 1.1 billion to acquire Luozhou Company, and so on, all of which targeted domestic leading companies in their respective fields. And now, foreign companies investing in China have gradually developed an initial market monopoly in some fields by merging big companies in China. 4) Big transnational corporations begin to join in merging and acquiring domestic companies. At the beginning of China's reform and opening-up, in order to seize the market, the transnational corporations didn't take the target too seriously, they only merge and acquire generic companies. But now, the transnational corporations turn their eyes to the "big" companies in China in order to carry out their global strategy and their pursuit of higher profits. As the data shows, 80% of the large supermarket chain stores in China's big cities are held by foreign capital, and some transnational corporations, such as the Microsoft and Tetra Pak packaging, even dominate as large as 95% of the relevant market. So we can see that foreign M & A has great influence on the market structure, and it is indeed easy for foreign corporations to form a market monopoly power.

Secondly, in the long run, the M&A by foreign investors have the possibility to cause negative impact on China's economy, fostering excessive dependency on foreign capital. The report entitled "the Behaviour of Limiting Competition by Multinational Corporations in China and the Countermeasures", issued by the State Administration for Industry and Commerce in 2004 demonstrates this negative influence. At present, the fundamental question is, mergers and acquisitions by multinational corporations which have influence on China's market competition have not obtained adequate attention. In industries such as mobile phone, computer, IA servers, network equipment, computer processors, the multinational corporations enjoy absolute monopoly status in our country's market. In China's light industry, chemical industry, medicine, machinery, electronics and other industries, the multinational corporations take up over 1/3 of our country's market shares. This is not conducive to the layout of China's industrial policy when

massive foreign capital may attack China's national industry system, or threat China's industry security and the economy security. In fact, in recent years, cases have occurred that foreign capital discarded the national brand after their M&A, thus eliminating the national brand, which is another major drawback.

## 2.2 The Positive Impact on the Market

We must also consider its merits while facing the drawbacks mentioned above, weighing pros and cons as well as preventing the spread of nationalist sentiment which may control our decision. Only in this way can we deal with foreign M & A in an objective and rational manner.

Firstly, it is an issue concerning market competition and economy security. According to a survey, the total amount of contract price invested by foreign M & A was less than five billion US dollars, which only accounted for 2.5 percent of the total foreign investments in China during the same period. Yongtu Long, the Secretary-General of the Boao Asian Forum advocated that inspection and supervision should be stressed in international mergers, which would not necessarily cause industry monopoly or harm the safety of economy. They were not supposed to be seen as devils. In fact foreign investment may break the monopoly of state-owned enterprises in some areas by echoing or collaborating with private enterprises. To disallow foreign investors to engage, or to adopt the exclusion policy in the name of nationalism does not make the national economy more secure. On the contrary, the more rejection to foreign investments, the more vulnerable the national economy will be. A national security review of foreign M & A can solve the problems concerning economic security and national security.

Secondly, it is an issue concerning the loss of national brands. When confronted with the fallbacks of some national brands after international mergers, a more reasonable and objective manner is expected. As a regular situation in market economy, international mergers are transformations of the movable and reorganized capital. Another point we should realize is that, these former national brands are still alive in spite of decadence. They prevail in China, and are still produced and merchandized by Chinese workers and managers, which play important roles in the Chinese job market, and make more or less contributions for the economic development of many areas. Meanwhile, we should notice that, some new national brands are emerging while certain seniors departed in international mergers. It is reasonable to say that the course of decreasing and regenerating itself is actually a course of better selection and sustentation. Going with temporary twists and turns, the course caters for the birth and the development of a growing number of desirable economic entities while shedding off the previous problems in business operations. Of course, we should be alert and take preventive measures against the act of malicious elimination of competitors' brands.

Finally, it is an issue concerning the reform of the state-owned enterprises (the "SOE"s) and the strategic reorganization of state-owned economy. Currently, there are around 400,000 SOEs in China, whose total debts are over 5 billion RMB. At the same time, the strategic reorganization of SOEs requires that the state capital withdraws from certain industries and enter the pillar industries. No matter whether the proceeds are in the form of asset or equity, the state's withdrawal needs buyers. However, non-state-owned enterprises that have necessary funds to fulfill this responsibility are quite few at present. The way which foreign capital acquires or merges China's SOEs has expanded the financing channel of the China's state economy and provided the important sources of funds for the reform of the SOEs. In addition, foreign capital taking China's SOEs can provide us with cash on hand rather than the existing state-owned interests. This plays a supplementary role in financing. So, foreign M&A will change the picture that a majority of the listed companies in China are owned by the state as well as will improve the

corporate governance of those listed companies, which helps China's enterprises operating system to conform more with the world.

Nowadays, foreign capital enters China in a variety of ways, such as foreign-owned companies, joint ventures, and mergers and acquisitions. This created about 1/3 of China's industrial output, generated about 1/5 of the national revenues, and employed more than 20 million employees. The National Bureau of Statistics of China has always included foreign-funded enterprises as a part of the national economic statistics, so they have been deeply rooted into the Chinese economy. The technology brought by foreign enterprises accounted for about 50% of China's technology imports whereas the exports of foreign-funded enterprises accounted for about 60% of our total exports, of which high-tech products export of foreign-funded enterprises is 88 percent realized. It is clear that foreign-funded enterprises have greatly strengthened our country in world competitiveness as the most dynamic business group. Apparently, the input of foreign investment exerts good influence. Generally speaking, the advantage prevails the shortcoming. Now, the key point is to use the law to help us draw on the advantages and avoid the disadvantages.

### **3. An Analysis on Foreign M&A in China From the Perspective of Anti-Monopoly Law**

First of all, let us look at the Chinese scholars' viewpoints or attitudes regarding the ruling by the Anti-Monopoly Bureau of the Ministry of Commerce. 1) "Completely Affirmative Theory", represented by Professor Xiaoye Wang of Chinese Academy of Social Sciences; 2) "Basically Negation Theory", represented by Professor Jichun Shi of Chinese People's University; 3) "Noncommittal Theory", which is not to make a final evaluation before the specific details and reasons become clear. As mentioned before, the Huiyuan case should be left to scholars to solve the conflict, but the scholars and experts debated first.

#### ***3.1 An Analysis of the Three Reasons of the Anti-Monopoly Bureau's Ruling***

In fact, the three reasons of Anti-Monopoly Bureau's ruling are "two transmittal effects" and "one squeeze effect" - a transmission of market dominant position from carbonated drinks to juice drinks market and a transmission from Coca-cola's brand, and squeezing small and medium-sized enterprises out of the relevant market.

In terms of the two transmittal effects, both the Ministry of Commerce and Professor Xiaoye Wang considered that, carbonated drinks and fruit drinks are highly substitutable. Coca-cola was already in a dominant position in China's carbonated drinks market. It is most likely that once it comes into the fruit juice market, it will soon achieve a dominant position. However, Professor Jichun Shi held that fruit juice market is a fully competitive and very classified market. Huiyuan only makes up 40% of the so-called high-concentration and middle-concentration juice market and less than 10% in the whole juice market. There are no customary industry standards and legal barriers in the juice market, so coca-cola cannot restrict market entry.

I think the transmittal effect may exist, but the justification given by the Ministry of Commerce is ill-founded and lacks persuasive power.

As for the squeeze effect, the Ministry of Commerce and Professor Xiaoye Wang thought, if

Coca-cola were to acquire Huiyuan, it would be possible that Coca-cola would do package deal or bundle sales with its dominant position in carbonated drinks market, resulting in squeezing Huiyuan's major competitors (most of which are small and medium-sized enterprises) out of the juice market. Professor Xiaoye Wang considered that, although the purpose of "Anti-Monopoly Law" is not to protect small and medium-sized enterprises, these enterprises should not be disregarded. If they are not engaged in the market competition, the enterprise monopoly will enhance.

However, scholars holding the "Negation Theory" considered it possible that this merger could bring opportunity to small and medium-sized enterprises. The current juice market is a low-level repetitive competition, so M&A can enable an upgrade of China's juice market, a more standardized competition, and a more reasonable competition structure. The industrial chain built around Coca-cola will be superior to the one around Huiyuan. All of these provide opportunities to small and medium-sized enterprises.

My point of view is that instead of focusing on the small and medium-sized enterprises, the Anti-Monopoly Law should pay more attention to market competition and consumers and leave industrial policies to support the small and medium-sized enterprises.

### ***3.2 Goals of the Anti-Monopoly Regulation on Foreign M&A***

The "Anti-Monopoly Law" should not protect the interests of a particular enterprise; instead, its goal is to protect market competition (rivals' competitive rights) and consumer interests.

The "Anti-Monopoly Law" is not a panacea and should not bear too many responsibilities. Other than competition, it can provide no solution to issues like the national brand, the foreign capital policy, the national economic security and so on. Those issues should be dealt with by other laws. We cannot expect the immature "Anti-Monopoly Law" to solve a series of problems like setting up national brands, attracting foreign investments or establishing industrial policies. The main purpose of the concentration investigation is to prevent monopolistic behavior. We should not expect this investigation to also issue penalties against and to regulate the abuse of dominant position and cartel conducts. As long as the reviewers consider there may exist an abuse of the dominant position like bundle sales after the concentration, and there may be more harm than good, they can ban this concentration. Therefore, regulations concerning concentration need not care whether there really is an abuse of dominant position after the concentration.

### ***3.3 A Review of the Nature of This Acquisition and the Definition of Relevant Market***

I have noticed that different agencies have different calculation about the share of Huiyuan Juice in relevant markets. According to the data offered by Coca-Cola, after the acquisition, their share will be less than 20% in non-carbonated drinks market of China. But according to a calculation carried out by Beijing Orient Agribusiness Consultant Ltd., among the 134 beverage enterprises above certain designated size, the sales of Huiyuan Juice have reached as high as 13.95% in China's domestic market. In addition, according to AC Nielsen data, Huiyuan in China's domestic market of pure fruit juice has a high share of 46%. The only reason why different institutions have come to different conclusions about the market share of Huiyuan is because of the different definitions regarding relevant market used by various agencies. In other words, some regard non-carbonated beverage market as relevant market whereas others regard pure fruit juice market as relevant market.

Some scholars held that there exists a small chance of substitutability between non-carbonated beverage and pure fruit juice, so its acquisition belongs to mixed M & A. I do not agree with it. Because carbonated drinks and fruit juice drinks have a high possibility to substitute

each other, in other words, the substitutability is very high. And Coca-cola has its own fruit juice product - Minute Maid, hence, there exists competition between Coca-cola and Huiyuan. Therefore, this acquisition should be viewed as a horizontal M & A. Anti-monopoly regulation has always been more stringent on the horizontal M & A. On the contrary, the mixed M & A is usually encouraged because it generally optimizes the allocation of resources and is usually a complementary merger.

As far as this acquisition case is concerned, the uniqueness of fruit juice market is that the products with high degrees of breakdown can still be fully substituted. Therefore, the whole fruit juice market is a relevant market. However, since the Ministry of Commerce did not disclose sufficient details of this case, we were unable to determine how it defined relevant market. In light of the published information, the Ministry of Commerce declared judicially that there was no significant substitution effect between the fruit juice market and the carbonated drinks market. In fact, there is a strong correlation and certain substitutability between the two. Moreover, Coca-Cola also has Minute Maid, a fruit juice product.

***3.4 The most critical challenge in this case is whether or not there is a negative impact of nationalistic sentiment on the relationship between the decision of the Ministry of Commerce and national brand protection, industrial policy or economic security***

As a result of irresponsible media speculation and guidance, widespread attention is paid to this case in China. And up to 82% of online statistics were against this acquisition.

I agree with the views of the vast majority of scholars that the decision of the Ministry of Commerce has nothing to do with national brand protection, industrial policy or economic security, and it has not been affected by nationalistic sentiment. However, the over-exaggeration in media and the fuzzy position of the Ministry of Commerce offered a vague excuse for the outside world. This seems suspicious that the decision of the Ministry of Commerce has been made under a situation being kidnapped by Chinese public opinion.

***3.5 In the background of the financial crisis, what kind of negative impact will result from the decision by Ministry of Commerce to prohibit the acquisition***

Even if there is no such decision of the prohibition on the acquisition of Huiyuan by Coca-cola, still there is a serious challenge for Chinese enterprises "going out." If we demand that the Chinese anti-monopoly law enforcement agencies protect Chinese national brands, meanwhile also take care of the feelings of multinational companies as well as to ensure the Chinese companies to go out, they will not function well anymore. The Anti-Monopoly Law, as a rule regarding competition, should be equally applicable to SOEs and private enterprises, and to domestic enterprises and multinational corporations as well. In addition, in such financial crisis, a possibility can not be completely ruled out that the regulators are manipulated by those being regulated.

***3.6 Finally, judging from the anti-monopoly review, many need to be improved in some aspects***

The Anti-Monopoly Law needs to be more sophisticated and its enforcement should be more closely and narrowly exerted. We urgently need to develop the implementation details of the Anti-Monopoly Law, and its Implementation Guide. The Ministry of Commerce needs to pay a closer attention to the development of at least four regulations: *Regulation on Application for Enterprises Concentration*, *Regulation on the Review and Approval of Enterprises Concentration*; *Regulation on Investigation and Treatments Regarding Unregistered Enterprises Concentration*; *Interim Measures of Investigation and Regulations about Enterprises not in Keeping with*

*Declared Standards and with Suspicion of Monopoly*, which are equivalent to "Merger Guidelines" in the United States, Australia and other countries. The application procedures should be more transparent, so as to allow enterprises to know clearly what kind of materials should be provided at different stages of the application. For example, what is the necessary information they should provide at the initial application? What are the adequate and sufficient information they should provide when necessary in the following stages of application? This way, the anti-monopoly law enforcement agencies can get more complete information.

In any case, the Ministry of Commerce's prohibition of the acquisition of Huiyuan by Coca-cola is a landmark in the implementation of the Anti-Monopoly Law. It is conducive to the popularity of a competition culture which is very scarce in China's society, and it is beneficial for promoting China's Anti-Monopoly Law to the world.

#### **4. The Rational Attitude of Facing Foreign M&A**

In a market economy, it is normal to either have a competition or cooperation. An opening-up China should have an open mind and all people of China should have the courage to face and accept market competition. In the condition of economic globalization and market competition, we need to pay special attention to nationalist sentiment, and we cannot have a national bias or laissez-faire economic nationalism. Otherwise, it will cause the international community, especially foreign investors, to view the Chinese economic environment with no confidence. Eventually, it shall endanger China's economic development. As market economy is governed by law, we should regard foreign M & A in a rational manner, from perspectives of relevant laws, internationalization and the market behavior, rather than protecting domestic enterprises and evading the normal market competitive under the pretext of nationalism. This time, the domestic over-reaction for Huiyuan case, on the one hand, has reflected that people pay more attention to China's domestic enterprises' development. On the other hand, it has also reflected people's tendency for excessive nationalism and irrational catharsis when facing foreign M & A. These also demonstrated that people had overlooked laws in their minds and the emotional over-reaction and irrational catharsis outweighed the social value of the law. (In this case, few people advocate that to let legal things be handled by the law. On the contrary, the voice that the law should yield to the so-called public opinion becomes very popular; strictly speaking, it contradicts the tenet of the rule of law). Therefore, we should seriously consider how to seek for a reasonable balance point between the public opinion and the legal rules when we encounter cross-border M & A, so as to ensure not only that the law can fully play its role in society in dealing with such issues, but also it is in line with the true wishes of the majority of people— in the environment of competition, to ensure the country's healthy economic development as well as consumer benefits, and even to allow a win-win situation on both sides of the M & A.

*First, we must clearly understand that the law and public opinions are associated.* The law which is worked out by the legislature of the state is the public opinion with the highest level of enforcement power. The opinion that public opinion would be against the law is irrational thinking. If the majority of people think that one law is not a unit of the legal opinion and feel it necessary to make an amendment or repeal, then this should be resolved through legal procedures, not be resolved by "public opinion kidnapping laws." We should believe that it is rational to solve problems in real life by law, although this is not the only means. Similarly, when the courts apply laws or the enforcement branches carry out the law enforcement, it does not necessarily mean that the law reflects public opinion. If we always yield to public opinions, conversely, it is probably against the rule of law.

*Secondly, we should distinguish between public opinion and the interest of groups.* Our laws should reflect public opinions, but public opinions can not become narrow nationalism sentiments, especially, it can not become an excuse of the enterprises for self-protection. What's more, we must be careful not to allow public opinion be kidnapped by interest groups, and further become their tools to advance their own interests. When facing foreign M & A, our law enforcement agencies must remain clear-headed and rational. We should analyze the nature of relevant market behaviors by the law, not by public opinions. The demand to review mergers and acquisitions from the angle of national economic security arouses suspicion that some enterprises of the same business or industry seek the asylum from public authority in order to evade competition.

*Finally, the legislation, judicature and enforcement of the Anti-Monopoly Law are highly professional.* Accordingly, it requires judgment from professionals who possess a strong theoretical foundation of law and rich legal practice. It is neither serious nor scientific to determine the legality of market behavior only with one's own intuitions. Usually, on the question of whether a cross-border M & A is illegitimate, ordinary people come to a conclusion based on their own intuitive feeling or "implicit public opinion" (they have no independent opinions and just listen to public opinions assertively). This conclusion should not be the basis for judging whether a behavior is illegal or not. More importantly, it should not impact the decision by our national anti-monopoly law enforcement agencies. As a matter of fact, it is a violation of the rule of law to use the so-called public opinions to attempt to replace or suppress the law. China in the 21st century can no longer repeat the historical tragedy of the 60's and 70's of the 20th century.

## Conclusion

In addition to the impact of national sentiment, another key reason for the sensation of this aborted foreign M & A case is that China's anti-monopoly laws and regulations lack the implementation details of some procedures. It highlighted the needs to set forth regulations regarding the discretion of the law enforcement agencies as well as to reduce the uncertainty of law enforcement. Although China's Anti-Monopoly Law became effective on August 1, 2008, the M & A's application procedures, review procedures, standards and other issues are not yet clear, and there is a need for more detailed and corresponding implementing rules to come to a more transparent review decision.

We are concerned about foreign M & A, but do not discriminate against it. We regulate foreign M & A, but do not prohibit it. The regulation of foreign M & A is not only a pure legal issue, it also relates to economic implication, national industrial policy and economic security. But by no means it is a simple catharsis of nationalist sentiment. The incident, which led to a wide range of emotional expression due to some of domestic media speculation, has become an excuse for the international world to challenge the impartiality of China's Anti-Monopoly Law enforcement.

With an increasingly globalized environment, Coca-cola's acquisition of Huiyuan is not the beginning, nor is it an ending. Foreign M & A of China's enterprises as well as Chinese-funded M & A of foreign enterprises (Zhiwu Chen, a professor of Economics at Yale University has publicly stated in October, 2008 that perhaps it is a good time for China's enterprises to buy a large number of greatly shrinking United States stocks in the financial crisis), are the performance of economic globalization. However, this kind of phenomenon needs to be regulated by laws of various countries, particularly anti-monopoly law. Therefore, in the face of foreign investment, we should have a correct attitude and make an objective assessment of it. We need to base on our current

laws, with a legal perspective to examine foreign M & A. We should not rely on our own subjective opinions or blindly believe that the entry of foreign capital will endanger China's economic security, and then opposed foreign M & A without selection. Otherwise, China's market economy will have difficulty winning the trust of international community, which would affect or hinder the entry of foreign capital. Hindered foreign investment and M & A may allow some people to give vent to the national sentiment, or allow some companies to temporarily avoid competition, but one should know that it will be at the expense of our country's economic development and consolidation of the rule of law.

Finally and most importantly, I hope that the international community does not over-react to China's antimonopoly decision over this case; instead, just take it as a single case. Mr. Ming Shang, Secretary of the Anti-Monopoly Bureau, Ministry of Commerce, once said, the Anti-Monopoly Bureau is still a baby and the Anti-Monopoly Law, the baby's mother, is also a baby (babies are prone to making mistakes, we need to be patient to wait for babies to grow up). If one regards this comment as an excuse for China's trade protectionism, the conclusion may be too arbitrary; if this is indeed used as a reason for our implementation of trade protection, it is really an excuse.

To sum up, in regard to a case with broad international impact and controversies, the Chinese government simply made a misleading yet not wrong decision at a wrong place in a wrong time.

*Jin SUN is Professor of Law at Wuhan University, specializing in anti-monopoly law and corporate law.*

孙晋是武汉大学法学院教授，研究方向为反垄断法与公司法。

## 书评——黄亚生：《有中国特色的资本主义》

Book Review: Yasheng Huang, *Capitalism with Chinese Characteristics*

梁捷

(Jie LIANG)

很多人都还对黄亚生教授上一本著作记忆犹新。那本书名为“Selling China”，可直译为“出卖中国”。恐是保险起见，中文版最终以副标题“改革时期的外国直接投资”出版，便没能在国内产生多大反响，甚是可惜。

黄亚生的观点本来异常尖锐，大有一举戳破“中国奇迹”之势。非专业人士未必熟悉外国直接投资（FDI）这个概念。但将其转译成星罗棋布的开发区、如火如荼的招商引资、不断攀升的外汇储备，整幅图景就一目了然。我国吸收外资的成绩极为优异，1993年后连续九年成为仅次于美国的世界第二大吸收 FDI 国家。2002 年以来，中国吸收 FDI 数量更是压倒美国，跃居世界第一。相形之下，整个非洲吸收的 FDI 占世界 FDI 的比重从来没有超过 2%，90 年代末甚至跌至 1% 以下。同为“金砖四国”的俄罗斯、巴西和印度吸收 FDI 的能力也远逊中国，不可同日而语。

若能站在火星上观察地球上的资本流动，一定可以观察到两个明显特征。第一，相当部分资金在发达国家之间相互流动。美国是世界上资本最充裕的国家，但他国投资者仍愿意将资本投向美国。这也印证了《圣经》名言，“凡有的，还要加给他，叫他有余”。第二个特征，更多的国际资本纷纷流向中国，义无反顾。主流经济学家对此解释说，中国劳动力成本低，反衬出资本回报率高。再加上政治稳定，基础建设良好，都有助于吸引投资者。

可黄亚生认为这种解释忽视了一个重要前提。并非中国更能吸引外国直接投资，而是中国一直在压抑民营资本而献媚于外国资本，两者从不在一个平等的环境下展开竞争。由于招商引资成为地方政府的政治目标之一，有些地方甚至不惜以极低的代价将土地配给给外国资本，造成“出卖中国”的事实。FDI 的巨大存量并不能单纯看作中国经济实力增强的迹象。

在《有中国特色的资本主义》中，黄亚生进一步发展了这套论述。恰逢“改革开放三十周年”，黄亚生无意概括总结三十年奇迹的“伟大经验”，而是想直接切入三十年经济发展的具体脉络。要知道，从长达六十年的“康德拉季耶夫长周期”来看，三十年只是短短一瞬，最多只走完长周期的一半。三十年的经济增长并不能说明什么，若不梳理清楚其中机理，接着走三十年的经济衰退也并非不可能。前苏联亦曾保持了不下三十年的高速增长，可也未能走过六十年的经济周期。

恰逢全球金融海啸来袭，破灭了美国金融泡沫，也沉重地打击到中国经济。如同一场大病，强制性地迫使我们静下来反思这些年所走过的路。柏克曾说过，骑士的时代已经过去，继之而来的是诡辩家、经济学家和计算机的时代。萨缪尔森曾沾沾自喜地把这句话置于《经济学》的开篇，彰显经济学的重要性。不过我们要记得，这不仅是经济学家的时代，更是一个诡辩家的时代。

主流经济学界对中国经济在 1978 年的发端并无多少异议，从农村土地制度改革到乡镇企业的崛起，成为中国经济起飞的最初推动力。如果从产权角度看，直到八十年代末，还几乎没有真正意义上的民营企业，工商个体户的数量和经营规模也时有起伏。那些戴上“红帽子”即以集体企业为名的乡镇私营企业在缝隙中顽强崛起，成为国民经济的生力军。它

们所创造的产值在农村总产值中的比重很快就超过了五成。其中多数企业在九十年代摘掉了红帽子，实行股份制改造或者民营改制，清晰化产权，转型为民营企业，终于成为国民经济中举足轻重的一支力量。

然而主流的经济叙事一般到此为止，很少有人对九十年代以降的中国经济发展逻辑再作阐释。从历史角度来看，时间隔得还太近，趋势尚不明朗；从政策角度来看，多项政策改革还有反复，未可遽然而论；从经济研究角度来看，数据披露太少、政策又不透明，使人无法全面把握中国经济。总的来说，研究时机尚不成熟。

可不管研究达到何种水平，经济自有其运行规律，经济体亦必须为不成熟的研究付出代价。黄亚生就在这不成熟的时机下手，最终发现了一套与官方、学界主流阐释大不同的故事逻辑。说是大不同的故事逻辑，老百姓却未必隔膜。中国的老百姓已在日常生活中承受了极大压力。国富民不富，“中国奇迹”的背后是无数“人民悲剧”，故而黄亚生忍不住要追问，中国奇迹到底是谁之奇迹、何种奇迹？

上世纪九十年代，中国的经济增长模式不再同于以往的市场化改革。“国家资本主义”一词或可道出其关键。1993-2001年间，民营企业的固定资产投资占全社会固定资产投资总额的13.3%，而在1981-1989年间，这一比率高达21.4%。民营企业生存空间不断缩小，这就意味当前大多数产业仍由国有企业主导。据黄亚生估算，1993-2001年间，真正的私营企业规模仅占产业总规模的22%，远远低于很多学者估算的50%。

上世纪九十年代，中国经济的主角仍是国有企业，从未真正让位于民营企业，而且国企借助行政垄断力量，已经牢牢控制了国计民生的核心产业。各种进入中国的外资也以多种方式与政府合作，一同挤压民营企业本就逼仄的生存空间。从文献来看，九十年代学界最热门的话题即是“国企改革”。就在学界对国退民进、政企分开的发展方向形成共识的时候，真实情况却在反向发展，国有企业步步紧逼反倒掌握了主动。

上世纪九十年代，农村个体私营经济开始受到打压。个体私营经济必须面对严格的整顿和规范，发展条件比过去苛刻许多。政府要抑制从业数量的扩大幅度，将其纳入可控范畴之内，最终导致城乡收入差距不断扩大，两极分化，甚至农村识字率都有所下降。尽管九十年代城乡企业利润和财政收入在增加，但城乡整体家庭收入增长率却要低于GDP的增长率，人民并未真正分享到经济增长的红利。

上世纪九十年代，中国扶助私有经济的政策也发生转向。一方面，政府显著提高了私有经济获取贷款的资格和条件；另一方面，政府改变了以往向农民提供贷款、帮助他们兴办乡镇企业的政策，农业贷款变成专款专用，只能用于发展农业。这也与八十年代的中国金融改革背道而驰。

上世纪九十年代，中国在城市里逐渐推行住房、医疗和教育制度的改革，借“国企改革”的名义，废除福利制度，将这些社会保障推入市场。可这些改革都不彻底，改革成本实实在在地转嫁到老百姓身上，却还是未能构筑起真正透明有效的住房、医疗和教育市场。

九十年代以降，中国仍然以极高的速度经济增长。出于历史延续性考虑，我们当然可以将它与八十年代的改革并称“三十年奇迹”，但若从内部机制来探寻，中国经济实在已经走上了另一条道路。表面风光无限，内里黑幕重重。百姓仍在苦苦挣扎，看着不断高涨的宏观数据，再看看不断高涨的房价、医疗和教育，希冀前者是长久的，后者是暂时的。

上海即是外强中干的中国经济的典型代表。作为中国第一大都市，中国经济、金融中心，又曾与中国政治产生紧密联系，上海一直是中国经济的骄傲。印度总理辛格看着这个高楼林立、高架环绕、地铁发达的城市说，印度一定要学习上海！印度财政部长 Jayant Patil 也感慨说，上海可以修时速450公里磁悬浮交通，印度却不能，两者动员资源的能力有天壤之别。可黄亚生说，上海错了，完全错了。与临近的浙江相比，上海经济毫无活力可言，亦无未来可言。

黄亚生发现，虽然上海被认为是中国奇迹的典型代表，东方巨龙口中明珠，可对于上海经济的实际研究却惊人地欠缺。上海经济学家的数量恐怕仅次于北京，可他们多半也不了解上海的实际发展状况和动因。上海与孟买或者香港的“双城记”只停留在表面的奢华泡沫上。想当年，东南亚经济奇迹的时候，东南亚许多城市亦是如此风光，城市迅速增高。可不过几年，已经少有人再会提起过去的辉煌。

黄亚生敏锐地指出上海经济的三个特点：

第一，上海的企业不是被政府高度控制，就是被外资高度控制，真正的民营企业十分稀缺。从上海毕业大学生的就业取向即可看出一些端倪。上海毕业生多数人理想是进入外企，成为白领，这已构成所谓海派文化的鲜明特质。另一些务实的人则会努力成为公务员或者进入国企。上海几乎没有人会“创业”，政策上从不支持，而且在国有垄断企业和外企的控制下，几乎不会给民营企业留下存活的空间。

第二，上海的收入分配差距严重拉开。九十年代以降的市场化改革之后，可以说，上海的贫困人群已被政策所抛弃，而他们在上海总人口中所占比例并不低。占上海人群相当比例的本地人的收入，与国内其他地区相比，并无明显差异。可上海的物价和生存水平要远高于全国平均水平，这就使得上海大部分人民的生活非常拮据。巨大的基础建设投资与房地产泡沫，极大地富裕了上层精英，却很少使得一般的上海家庭受益。

第三，尽管上海汇集了众多高科技产业，但没有任何证据表明上海富有创新，上海的新闻、言论、学术研究的活跃水平也远不如其他地区。更重要的是，上海缺乏企业家和企业家精神。没有自由竞争的市场环境，就不可能孕育出真正的企业家和企业家精神。2002年，国有企业在上海经济总产值中所占比例仍高达 39.4%。与此同时，浙江国有企业所占比例仅 13.6%，由此可见两地完全处于不同的经济发展模式。

与上海模式相较，浙江模式（特别是温州模式）堪称中国最具有资本主义企业精神、最高市场化程度和个体化程度的发展模式。浙江的政府很小，控制范围有限，而民营企业的活力却十分充沛，主导了经济乃至公共治理的方向。从数据来看，浙江的经济增长速度与上海一样一直处于全国前列。更重要的是，浙江中低层人民也多半分享到了经济增长的红利，实际生活水准迅速提高，与苦苦挣扎的上海人民大不同。

中国奇迹、中国特色、北京共识、上海模式这些概念的提出，表明中国经济和政治的复杂性，金融危机和其他危机也都进一步增加了未来的不确定性。然而“太阳底下没有新事物”，不管怎样的经济主导路径，保证绝大多数民众的利益，真正地、长期地保障与提高他们的生活水平，这必是经济发展永恒的追求目标。

梁捷为复旦大学经济学院博士生。

*Jie LIANG is a Ph.D. candidate in Economics at Fudan University.*

## China and the Global Financial Tsunami: The Eleventh OYCF Annual Meeting Summary 中国与全球经济危机：OYCF 第十一届年会会议摘要

**[EDITOR'S NOTE]** The Overseas Young Chinese Forum (OYCF), the publisher of *Perspectives*, held its 11th annual meeting on May 30-31, 2009, at Wagner College, New York City. The meeting was co-sponsored by the Chinese Finance Association and Chinese Business Lawyers Association. The theme of the meeting was the impact of the global financial crisis on China. There were one keynote speech, five panels, and a special session on a documentary of the 2008 Sichuan earthquake. As with previous annual meetings, discussants of each panel have written the following summaries of panel presentations and discussions.

**[编者按]** 本刊出版者，海外中国青年论坛，于2008年5月30-31日在纽约市的瓦格纳学院召开了第十一届年会。这次会议由中国金融协会与中国商务律师协会联合主办。会议的主题是全球金融危机对中国的影响。会议总共分为一个主题演讲、五个讨论小组和一个关于2008年四川地震纪录片的特别时段。每个小组的主持人记录了会议演讲和讨论的摘要，于本期发表。

### KEYNOTE SPEECH

#### Global Financial Crisis and China: Major Policy Issues

(Speaker: Yasheng HUANG; Discussant: Ling YANG)

The speaker was Yasheng Huang, Associate Professor of the Sloan Business School, Massachusetts Institute of Technology. The Discussant was Ling Yang, Ph.D. student in sociology at Stanford University.

Despite its high GDP growth, China ranks the highest in exportation yet drastically low in domestic consumption. Huang argues that this puzzle should be examined by asking not why China exports so much, but why it consumes so little. The high exportation, in his view, is an endogenous result of low domestic consumption.

As shown in figures, China has experienced a decline of domestic consumption from around 2000. Researchers mainly have two hypotheses to explain this phenomenon: (1) Low income growth leads to low consumption; (2) Low consumption is a result of high savings rate, which is due to high income growth. So the tension between these two hypotheses lies in whether there is a high income growth.

Statistics from the Rural Household Survey Yearbook show that rural household per capita income did grow steadily by year but the growth rate over the previous year is surprisingly low, with only 4% in the 1990s, and 6% from 2003 to 2006. Moreover, statistics show that the slight growth in rural household per capita income from 2003 has to a large extent due to the growth of agricultural income, not non-farm income such as remittance by migrant workers, as many people would assume. According to this survey data, only 20% households actually received remittance in the 1990s.

The low rural household per capita income growth from 2003 calls attention to the effectiveness of policy adjustments initiated in this year. There is a renewed emphasis on rural issues by Hu and Wen administration, which is implemented by abolishing rural taxation, reducing education and health fees, reviving rural finance and land reforms. In Huang's view, it is

insufficient to just pour money into the rural welfare system, and more urgent and important to ensure and strengthen the credit access for rural households. Rural migration, which causes a lot of social problems, is a result of the stringent credit access in rural areas forbidding people to run business in-house and therefore forcing them to migrate to cities for work.

#### PANEL ONE: CAUSES AND FINANCIAL IMPACT OF THE GLOBAL FINANCIAL CRISIS

(Speakers: Qianli WU, Maggie JIANG, Yong WENG; Discussant: Bin LI)

The speakers were Qianli Wu, Senior Portfolio Manager at Rydex SGI, Maggie Jiang, Director in Asset Securitization Group at Barclays Capital, and Yong Weng, Head of Active Quantitative Equities within Structured Equities at UBS Global Asset Management. The discussant was Bin Li, graduate student at Duke University.

Wu's presentation, "What Causes the Largest Crisis in the History?", provides inspiring insights of the formation, development, and impact of the current global financial crisis. Mr. Wu reviewed the causes of this most severe financial crisis since *World War II* from two levels, i.e., the country level and the market level. Specifically, he analyzed how the economic structures of the United States and China interact and whether this interaction would be a driver of financial crisis today. On the market level, Wu pointed out that free market competition may also have some side-effects. For example, hedge funds' and investment banks' investments used to be embedded with high hidden risk, because they believed the government would protect them when the crisis came ("Greenspan's mistake").

Jiang's presentation on "Causes and Financial Impact – Role of Securitization" provided an overview of asset-based securitization and its profound benefits, discussed about its role in financial crisis and how securitization can help restart the economy, and introduced Term Asset-backed Securities Loan Facility's ("TALF") implications for credit markets. She demonstrated that, under the general economic conditions in current years, securitization can overcome balance sheet weaknesses and provide a significant proportion of all financing.

In his talk, Weng addressed the causes and financial impacts of this global crisis from a different perspective. He thought the key contributors to the current financial crisis were the credit boom and housing bubble, e.g., driven mainly by mortgages, total household debt quadrupled during last 20 years, and home prices doubled from 1997 to the peak in 2007. Although fed rate target helped by exceptionally stable and loose monetary environment and sub-prime mortgage loans were fueled by securitization, banks and financial institutions, being the largest holder of mortgage debt, suffered most when the housing bubble burst. In addition, Weng summarized the federal policy responses to this crisis and raised further comments on issues about bank regulation.

#### PANEL TWO: ECONOMIC IMPACT AND POLICY RESPONSE

(Speakers: Tao SUN, Victor SHIH; Discussant: Zhenhua CHEN)

The speakers of this panel were Tao Sun, Economist at the Monetary and Capital Market Department of the International Monetary Fund, and Victor Shih, Assistant Professor of Political Science at Northwestern University. The discussant was Zhenhua Chen, graduate student at Duke University.

Sun talked about spillovers of the U.S. subprime financial turmoil from the United States to mainland China and Hong Kong. In his recent two papers, Sun found that China's stock market

was not immune to the financial crisis, as evidenced by the price and volatility spillovers from the United States. He also found that HK's equity returns had exhibited more significant price and volatility spillovers from the United States than China's returns had, and past volatility shocks in the U.S. had a more persistent effect on future volatility in HK than in China, reflecting HK's role as an international financial center. Sun's research suggested that the "decoupling" story may not exist in China or Hong Kong, and highlighted global integration of financial markets.

Shih talked about hidden vulnerability in China's financial system. He argued that China's debt level as a share of GDP would have been much higher than the official numbers if we counted local debt as sovereign debt. Professor Shih provided examples of how these local debts are formed through municipal investment companies to fund public projects that are mostly unprofitable. These municipal investment companies are pervasive across China on a provincial and municipal level, and most of them are highly leveraged. According to Professor Shih's estimate, the real debt to GDP level in China is closer to the 80% to 100% range.

### PANEL THREE: LEGAL AND REGULATORY PERSPECTIVE

(Speakers: Xiang CAI, Ying WANG, Pengyu HE; Discussant: Xuefeng YANG)

The speakers of this panel were Xiang Cai, Assistant General Counsel at Barclays Capital, Ying Wang, Associate at Simpson Thacher & Bartlett LLP's Corporate Department, and Pengyu He, Associate at Polk & Wardwell's Corporate Department. The discussant was Xuefeng Yang, MBA student at Stanford Business School.

In his presentation, Cai used the case of Accumulator, a once popular structured product in Asia, to illustrate his perspectives on how legal and regulatory system should respond to financial innovation in the aftermath of crisis. He began with a broad discussion on financial derivatives, and based on the analysis of Accumulator, Cai further posited four insightful points with which he attempted to address the policy issues on ongoing financial turmoil. These four substantive points could be summarized by "FDIC": Form and fragmentation; Denouncement and discrimination; Incentive and infrastructure; and Cause and correlation. By inquiring about the causal relation between derivatives and the financial crisis, Cai argued that regulators should not denounce the past financial innovations simply, but distinguish good elements from bad ones and set up a fact-finding based adjudication, which he thought would be more efficient than a blank regulatory ban. Moreover, the regulations would be based on forms, but not blindly. The critical task, according to Cai, was to delineate sensible forms based on economic functionality, business reality and user orientation. In the end, Cai argued that the key to preemptive prevention was to rectify promoters' incentives and focus on investors' education. Meanwhile, a well-established infrastructure, including enhanced regulators' competence/compensation and a cool-headed judiciary system, would help balance the current biased interests and prevent derivatives from going wrong again.

Wang's presentation on "U.S. Regulatory Update on OTC Derivatives" described the latest development from the Treasury Letter and short-sell regulations. On May 13, 2009, U.S. Treasury Secretary Timothy Geithner outlined in a letter the regulatory proposal relating to the conduct and oversight of the OTC derivatives activities, in which four objectives were mentioned: 1) Preventing risk to the financial system; 2) Promoting the efficiency and transparency; 3) Preventing market manipulation, fraud and other market abuses; and 4) Protecting unsophisticated parties. Wang pointed out that although some measures to carry out the four objectives were listed in the proposal, lots of details remained to be worked out, which created a certain level of uncertainty in the market place. Wang also provided a dynamic overview of the

short-sell regulations and their consequences. The story began with the short sell restrictions that the SEC imposed on the publicly traded securities of substantial financial firms in July last year in an effort to ease the turbulence in the financial market. As a result, many hedge funds suffered great losses from the inability to carry out these hedging transactions. Perhaps somewhat coincidentally, since the expiration of the ban, there was an upturn in the convertible bond market. In Wang's observation, over 50% of the convertible bond issuances this year also had a call spread overlay, suggesting that these transactions had been well received by the market.

He's presentation on the "U.S. Financial Regulatory Restructuring" provided an overview on the agenda of the U.S. regulatory reform in response to the financial crisis, with a particular emphasis on the bank regulatory regime. Using a regulator-financial entities graph, He clearly illustrated the current messy financial regulatory system in the U.S., in which he argued there were 1) no regulators overseeing the systemic risk posed to the entire financial system; 2) over fragmentation in the current regulatory framework that led to regulatory arbitrage; 3) lack of mechanism to resolve major financial institutions in an orderly fashion and 4) lack of international coordination. He pointed out several key issues in the current debate on the regulatory reform. One of them is whether there should be a single entity or a council of regulators to oversee and supervise all systemically important firms. From his point of view, such a systemic risk regulator, be it a single entity or a council, would be almost certain to happen since there are broad support in Congress and internationally. However, it is not clear how multiple regulatory agencies would be consolidated and streamlined because of the intense political pressure to keep the status quo. For instance, the merger of the SEC and the CFTC is probably not going to happen, though the merger of the two institutions is very logical. However, the OCC is very much likely to merge with the OTS, as the latter already lost its credibility during the financial crisis. He concluded that the financial crisis presented a great opportunity for an overhaul of the U.S. financial regulatory regime, but the on-going political turf-fighting among multiple interests would delay the process and make the outcomes highly uncertain.

#### PANEL FOUR: LEGAL DEVELOPMENT AND ECONOMIC RECESSION

(Speakers: John DU, Sida LIU, Catherine PAN, Angela ZHANG; Discussant: Weiwei SHEN)

The speakers were John Du, Partner of Jun He Law Offices, Sida Liu, Ph.D. candidate in sociology at the University of Chicago, Catherine Pan, Associate at Goodwin Proctor, and Angela Zhang, J.S.D. student at the University of Chicago. The discussant was Weiwei Shen, Ph.D. candidate in sociology at Stanford University.

Economic development and rule of law have been considered as two most important pillars of the post communist regime. It is very interesting to go over the progress of the Chinese legal development historically and recently, especially under the macro environment of global economic crisis. In this panel, three legal practitioners and one legal sociologist reviewed and discussed Chinese legal development in the reform era.

Du, an attorney with over 10 years of practice experience, went over the recent legal development of China. The revision and legislation of new laws were accompanying with the blooming of Chinese economy since 2000. Numerous laws and regulations have been modified and legislated, including some important ones such as antitrust law, property rights law, labor contract law and so on. Such laws, according to Du, have such key features: to satisfy the need to blooming Chinese economy, to comply with China's WTO commitments, to unify the legal

system and to make better legal enforcement. Du then went over the details of those important laws.

Liu, a sociologist of law, reviewed the development of Chinese legal profession and how the entry of international law firms affected endogenous legal entities. The earliest lawyers, back to 30 years ago, were mostly demobilized soldiers and lacked sufficient legal trainings. Ever since then, Chinese lawyers came on the way to the professionalization. With the rapid development of Chinese economy and the increasing need for professional legal service, the number of Chinese lawyers rocketed up from about 200 in 1979 to over 150,000 in 2006.

Just as the tiny number of the legal profession, early legal service was also in low quality. Early Chinese law firms, according to Liu, were incapable of completing international transactions (such as merge & acquisition in China). The major work was finished by international lawyers, and Chinese legal firms mostly served as a rubber seal (sign the legal documents and provide them to the state agency). However, conditions changed much after 2000, Chinese law firms and endogenous lawyers became competent in doing international business in China. International firms felt pressure and changed the old strategy of distrusting local lawyers. They started to 'steal' lawyers (mostly 3-5 years associates) from local firms by raising the salary and promising good packages of bonus. Such actions brought much trouble to local law firms, many of whom encountered the problem of maintaining and expanding the size of their business. Liu also discussed how financial crisis affected the legal service profession. The previously "hot" firms were affected fiercely, while other firms such as firms providing labor contract service became popular and in demand.

The panel also discussed the enforcement of antitrust law by Zhang and the popular issues of cross-border transactions by Pan. Zhang discussed the controversial issue of enforcing the anti-trust law in Coca-cola-Hui-yuan case with a claim of protecting local industry. Pan reviewed popular issues among the practice of cross-border transactions.

#### PANEL FIVE: THE FINANCIAL CRISIS' SOCIAL IMPACT IN CHINA

(Speakers: Ming XIA, John TIAN, and Qiang LI; Discussant: Dongtao QI)

The speakers of this panel were Ming Xia, Professor of Political Science, College of Staten Island, CUNY, John Tian, Associate Professor of Political Science, Connecticut College, and Qiang Li, Director of China Labor Watch. The discussant was Dongtao Qi, Ph.D. candidate in sociology at Stanford University.

Xia started his presentation with the assessment that the global economy has descended into a meltdown unseen since the Great Depression in the 1930s. He continued to compare and contrast three orientations to look at the current crisis in China: "Think as a bureaucrat" (James Scott's discussion), "Think as an engineer" (Megaproject mentality) and "Think as an economist." He argued that in today's Chinese decision-making process, the combination of the first two has dominated; the third orientation has been neglected. This problem has blindfolded the Chinese decision makers and the latter misinformed and misled the populace. Although the world has been in a state of doom and gloom, the Chinese leaders and most residents have demonstrated an irrational confidence. Xia also applied a variety of theories (such as Ted Gurr's "relative deprivation theory", James Davis's "J-curve theory", Hunting's "Threshold" theory, the transition theory in the former Soviet Union and Eastern Europe, etc) and several analogies (most conspicuously, Mexico and Indonesia) to gauge the resilience of the current regime and the possibility of China's democratization. He concluded that this economic crisis may catalyze China's transition to democracy.

Tian in his presentation examined the various aspects of the impact on China's rural economy by the ongoing global financial crisis and economic recession. He first presented the impact on rural employment and migrant workers; then he analyzed the impact on farmers' income growth; then, he discussed the difficulties the global economic recession posed on the structural change of Chinese rural economy by slowing down the pace of more recent reforms in rural China – land transfers system; finally he showed the implications for rural stability and local governance institutions as a result of pressures on college graduates going to work at local levels of government.

Li, as one of the leading activists on the forefront of Chinese labor rights protection, introduced several cases of his organization investigating and protecting Chinese labor rights in recent years. He presented workers' living and working conditions in the Chinese contractor plants of world famous company such as Disney, and discussed how the negotiations between his organization and these multinational companies have pushed their contractor plants to improve workers' safety and living conditions. He also touched on the bankruptcy cases in China under the economic crisis and how workers were influenced by the bankruptcy. In conclusion, he suggested that this economic crisis might push the Chinese government to further its effort of protecting Chinese workers' economic interests.

The discussion after the three presentations was unexpectedly heated among the three speakers. While Xia severely criticized the Chinese government's growing incapability in managing Chinese society and saw the necessity and high possibility of China's transformation to democracy, Tian insisted that it was still a question if democracy would help redress current major problems in Chinese society and bring Chinese a brighter future. Li, although being a long term challenger to the Chinese government, was optimistic about the Chinese government's capability of keeping China stable and managing various social issues.

## Teaching Social Stratification at Central China Normal University

### 在华中师范大学讲授社会分层

Timothy J. Madigan

In May of 2008 I traveled to Central China Normal University (CCNU) in Wuhan, China, to teach for the fourth time within the sociology department<sup>1</sup>. On this occasion I taught SOC 2280 Social Stratification to thirty some graduate students and several undergraduates. The course ran from May 26 until June 18th. Class was held on three days a week from 8am until 9:40am and on the other two days from 2:30pm until 4:15pm. Office hours were held at the end of the class or when students requested help. Although my task was to teach, I was also learning about China by living there and seeing the country through the eyes of my students.

In class I employed a method of instruction that I call 'enriched' lecture. I taught in English. However, since I am semi-fluent in Chinese, I also used Chinese whenever I could. Students were given a detailed study guide and a custom made PowerPoint file for each chapter covered. Many students took notes in the margins of their study guides. During class I switched between the PowerPoint slides and the study guide text. The PowerPoint slides provided visual information that complemented the text, such as a picture of Bill Gates or an ordinary office worker or a comical picture of an obese sumo wrestler's stomach being held up by a skinny boy. The slides worked to provoke laughter, provide a pause in the lecture, and to reinforce complex material.

Throughout the course I utilized a documentary film on social stratification in the United States (People Like Us: Social Class in American) because it provides a strong stream of visual stimuli about social class markers, lifestyles and ways of thinking. From working class people bobbing for frozen pig legs at a redneck gathering to upper class people sipping wine from luxury beach homes in the Hamptons, Long Island, the video captures vast social class differences. The video adds human flesh to the tables of dry numbers in the textbook. On a number of occasions I provided personal examples of how the stratification system works by reporting my yearly income or that of my mother, the cost of my house and land, the social prestige score of my dad and me, etc. After presenting a specific statistic, I would often ask questions about the particular characteristic of the Chinese stratification system such as what was the average salary, level of education, amount of social capital, etc.

In the past I required students to do class presentations. However, since many Chinese students have weak speaking and listening skills, a majority of students would go off task. This summer I required students to work in groups. They spent a small amount of time at the end of several classes to form groups and plan their work. Outside of class the groups pursued projects on one of several dimensions of social stratification within China such as its history, the place of women, social mobility, etc. The goal of these projects was to force the students to compare social stratification in the United States with that of China.

The sociology department at CCNU assigns one student to serve as the class monitor to maintain order and a good working relationship between the teacher and students. In the past the monitor for my class had good English. This time was no exception. "Hero" served as the class monitor and communicated with me in English during class, on the cell phone and over the

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<sup>1</sup> The author wishes to acknowledge the OYCF for providing funding for the trip and CCNU for room and board.

internet. She made sure that important information was conveyed to all students, the overhead projector and computer were working, the study guides were distributed to all students, tests were duplicated for forty students, any translation or interpretation issues were resolved on the spot, after class activities were arranged and so on. During the first time I taught in China, other sociology professors would sit in on my lectures. Surprisingly, that practice only lasted a week or so. Now, every time I teach in China the class monitor serves as the important link or resource between me and the faculty and administration.<sup>2</sup>

The performance of the students in the course was evaluated through two objective tests and from an identical pre and post essay assignment. On the first objective test covering chapters one through four the average grade was 80.7% with the lowest score a 40% and the highest a 95%. On the second objective test the results were similar except that that mean was higher. I interpret these results to indicate that a majority of the students were learning a substantial amount of the important material. This is the type of test performance that I have come to expect from the sociology students at CCNU. Many of the students relish the opportunity to take a class in English from a foreign professor who does not fit the usual Chinese mold. A core group works hard to prove that they are excellent students.

The students were given the opportunity to evaluate the course. At the end of the second test they were asked to rate the overall quality of the course on a five-point scale ranging from very high to very low. The modal response was 'very high' with forty-four percent of the students choosing it. The second most common answer was 'somewhat high' with thirty-four percent of the students. A little over a fifth of the class checked 'so-so, okay'. No student picked either of the bottom two categories. The average response was 4.22 on a five-point scale. I interpret these results to indicate that the students were indeed satisfied with the course overall.

The first day of class is always very important for teachers anywhere. At CCNU I believe it is even more challenging because of cultural differences and language barriers. I like to set the tone for the course at this time. At CCNU I introduced myself and then had the entire class stand up one-by-one to introduce themselves. I asked the soft spoken students to speak louder and to project their voice. One student proudly told me that he does not want to have an English nickname. I told him that nicknames are easier for Americans to remember but that I would work hard to remember their Chinese names because they are unique. For example, a student I met on my first teaching assignment in CCNU is named "Ping" which stands for peace. Another was named for sunset. Showing some interest in learning Chinese, especially through the students' names creates a positive impression in the minds of these students who are working hard to learn English. After the introductions, I went through the course goals which were to cover Dennis Gilbert's text on social stratification in the USA, review Harold Kerbo's book on world poverty, examine the processes and outcomes of social stratification occurring in China, and obtaining a glimpse into life in the USA at different class levels using a video on stratification. At the end of the first class, the students gave me a loud ovation, reflecting their enthusiasm to be in the course. I have never had this type of reception in the USA.

One major focus of the course was on how sociologists came to define, research, and discover social classes in the United States. Three theoretical approaches were used to guide our journey across social class and they were structural functionalism, conflict theory and Max Weber's approach. (Needless to say the students needed no introduction to Karl Marx and

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<sup>2</sup> The social importance of the student monitor in the Chinese education system was displayed to the world when little Lin Hao paraded around with the famous Chinese basketball star Yao Ming at the opening ceremonies to the 2008 Beijing Olympics. The Sichuan earthquake toppled his school, killing many of his class mates. Yet, after being injured and digging himself out he went to work saving fellow classmates.

conflict theory!) Sociologists discovered that people within a community made distinctions about each other based on their income, wealth, occupation, education, life styles, residence etc. Patterns in the distinctions are quite evident. People without education and who performed dirty manual work (such as garbage men) ended up being rated at the bottom of the list. University presidents who worked in offices, lived in nice neighborhoods and spent time on the golf course were placed high above most other people. All together, social class research identified six distinct categories: lower and upper working class, lower and upper middle class, and lower and upper upper class. The CCNU students researched whether China has a similar pattern of social prestige distinctions and they found that it does.

Research reveals that money in the USA is distributed very disproportionately. The top two percent of the population earn the lion's share of income and possess the lion's share of wealth in the country. The ramifications of this concentration of income and wealth were discussed (hegemony, political and economic leverage, better life chances in terms of health, longevity and happiness, etc.).

Out of the research on social stratification in the USA emerges a picture of great changes occurring in the economy and other social institutions. Many communities in America used to be centered on farming. With the growth of industrialization and investment from large national corporations, new types of workers and institutions were created. For example, bankers, loan officers, and tellers emerged and multiplied to support a market based system that was fueled by capital: taking out loans for machines, homes, education, creating new businesses or companies etc. Science, medicine, and technology grew. Schooling increased-- both teachers and schools (including postsecondary)-- to prepare the new white collar workers for middle level positions in the new economy. New leisure activities emerged for the newly rich to engage in and thus the pursuit of music and other arts grew.

Through all of this change sociologists were measuring how many workers were moving up the ladder of success so to speak within their generation or across generations. The picture that emerged was one of a mobile society where there is more upward than downward mobility. The mobility is short distance for the most part, such as a person in the lower middle class moving to the upper middle class. In addition, there are trends towards occupational inheritance at the top and bottom of the occupational structure. That is, people born into rich families were very likely to be successful in life and vice versa. Finally, in recent years the growing prosperity that used to be distributed across all Americans appears to be changing towards continued advancement for those at the very top of the stratification system and tougher times for those in the middle and bottom.

During class I asked my students to describe how aspects of the transformation of the American society fifty to a hundred years ago are going on around them in China today. They pointed to the mass movement of workers from the rice paddies to coastal cities for construction or factory jobs. They also noted the increasing reliance on machines and technology to accomplish jobs. The new technology and money has been creating a need for middle class professionals properly trained in post-secondary institutions. Inequality is growing. Sociologists are needed to study and help resolve emerging social problems.

The last part of the course focused on global inequality. Why do some regions of the world stagnate in poverty while other parts undergo strong, long-term growth which lifts many out of poverty? We read that the differences were due to the presence or absence of ancient cultural traditions, effective governments, type of colonialism and its impact, foreign investment, etc. The future picture looks promising for China as it is poised to continue moving up in the world

system while the United States has been sowing the seeds that could end its reign as the most powerful country in the world.

Despite all of the serious sociology issues raised in class, outside of class I was able to go out with faculty and students to eat 'real' Chinese food (such as duck tongues/feet, silkworms, eel, turtle, eggplant, smelly tofu), drink Chinese tea and TsingTao beer, receive a foot massage, and attend two wedding ceremonies. I played volleyball with some athletic students and went sightseeing with others to take in the local ancient treasures such as the Yellow Crane tower, East Lake temple, temple of 500 Buddhas, and the Hubei Provincial Museum. In the past I was provided the opportunity to cruise the three gorges dam and to hike around Jin Gan Shan Mountain. This time I turned down the opportunity to view the Yellow Mountain due to time constraints. Outside of class I also worked with one of my former students to write an article on gender socialization through Chinese characters which is being published in a sociology teaching manual. I helped some other former students prepare their research for publication, prep courses that they were going to teach at new university teaching jobs, and understand the nuances of the English language. One former CCNU sociology student will attend New York University in the fall. She will reside with the parents of one of my students that I took to China.

I took eight students from my home university with me to study for a month at CCNU. By all accounts they had a wonderful experience. Several are planning on returning to China to study or teach. In the fall my university will receive five students from CCNU as part of the student exchange program we were able to finalize while I was there.

In short, OYCF's summer teaching scholarship provides the right amount of support for scholars who want to gain a memorable glimpse of the new China and/or open the door to long term relationships and opportunities. My host institution, CCNU, also deserves credit for treating me so well every time I travel to Wuhan.

*Timothy J. Madigan is Associate Professor of Sociology at Mansfield University of Pennsylvania.*

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# *Perspectives: China and the World*

A Journal of the Overseas Young Chinese Forum

# 视角：中国与世界

海外中国青年论坛期刊

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