

China And The U. S. At The Crossroads: Rule Of Law Or Rule Of Force?

Terry Young, Pepperdine University, USA
Linnea McCord, Pepperdine University, USA

ABSTRACT

Although China's sudden reach for prosperity has created wealth for thousands of its citizens, it has also generated concern about China's future social harmony and stability. At the heart of Chinese politics is the unchallenged dominance of the Chinese Communist Party (CCP) which has governed China since 1949, but may be facing serious challenges in the years ahead. Likewise, US economic dominance that has existed for decades has hit serious economic headwinds. The recent financial crisis and its staggering public debt are posing a threat to US economic and political leadership in the world and the U.S. may be facing its own problems of maintaining security and harmony in a rapidly worsening economy. The question this paper will address is whether America's Rule of Law or China's Rule of Force will prevail in the long run?

INTRODUCTION

China and the United States have completely different social, political, economic and legal systems. The U.S. is a democratic republic that relies on freedom, rules of law and capitalism as the central tenets of its framework. China follows a policy of “socialism with Chinese characteristics” where it attempts to marry a capitalist-like market economy with the Chinese Communist Party (CCP) maintaining iron grip on politics. While China is the longest-running continuous society in world history, lasting more than 5000 years, the U.S., with only two and a half centuries of existence, is the longest-running self-governing republic in world history¹. Historically, China has relied on Rule of Force. The U.S. has always relied on Rule of Law.

Survival and success in the 21st century global economy will depend on a country's ability to adapt quickly and effectively to the chaos, complexity, constant change and crisis of the 21st century, where both speed and sustainability are essential. This paper will review the advantages and disadvantages of both the Chinese and U.S. systems and the challenges both countries will face in this new century in which both competition and cooperation are essential for economic prosperity and stability.

CONSTANT CHANGE IS THE NORM OF THE 21ST CENTURY

Change in the 21st century is driven primarily by the globalization of the world economy and the rapid and increasingly speeded-up pace of technological change. Globalization has provided countries with unprecedented prosperity and has also unleashed worldwide poverty. Along with technological innovation, commerce and innovative ideas have spread around the world irrespective of borders. Huge new emerging economies such as those in Brazil, Russia, India and China have changed the competitive calculus for established western economies and the global economy is now interconnected and interwoven in complex ways not possible before the advent of the Internet. The recent financial crisis has demonstrated that the world economy is totally integrated and interdependent. Global climate change, regardless of whether its source is man-made or not, promises to change weather patterns around the world to such an extent that “business as usual” will no longer be possible. Thus, as the hallmarks of the 21st century appear to be chaos, complexity, crisis and constant change, the countries that will be the most successful in the 21st century will be those that can make lightning fast changes quickly and effectively.

Over the past several decades, as China, India and the former Soviet Union discovered the limitations of state-ownership of the means of production, these countries have moved more towards market economies that rely

more heavily on private ownership and capital. With the addition of about 3 billion more participants in the global economy, there is now increasing competition for scarce resources such as commodities like oil, food and natural resources. Capital flows between countries have changed markedly. For the first time in history, more capital is being lent by the historically poorer emerging economies to the historically richer developing countries in the West.

Although currency and trade imbalances have been a source of political irritations between US and China, they are also painfully aware of their mutual interdependencies on each other. China and the U.S. are co-dependent. The US needs China to finance both its public and private expenditures and China needs US to buy its products since China's spectacular economic success is almost totally dependent on exports. High level delegations from both countries now attend semi-annual "Strategic Economic Dialogue" meetings, which underscores how important each nation is to the success of the other.

POLITICAL SYSTEM

The U.S.: American Rule of Law is unique in the world. Unlike the rights of citizens of any other country, the rights of American citizens come directly from "the Creator" as stated in the U.S. Declaration of Independence.² These rights include the "right to life, liberty and the pursuit of happiness".³ The reason why it is significant is that because American rights come directly from God and not through a king or an emperor these can never be repealed or amended by any individual or government.

The U.S. Constitution specifically includes checks and balances to ensure that judicial, legislative and executive power is always divided.⁴ Thus, power within the U.S. system can never be concentrated in any one branch of the federal government. Further, the federal government of the United States is a government of limited powers that are specifically enumerated in the Constitution. All residual powers not specifically granted to the federal government in the Constitution remain with the fifty states, each of which have their own constitutions and governments, established along the same lines as the federal government. This federalism system diffuses power as well so that power cannot be too concentrated in the federal government alone.

Finally, the U.S. Constitution contains a unique set of provisions contained in the first ten amendments to the U.S. Constitution that became effective in 1789, called the Bill of Rights. The purpose of the Bill of Rights is to guarantee certain individual rights such as a free press, freedom of religion, the right of free assembly, the right to a jury trial and due process, the right to be protected from unreasonable search and seizure by the government, and the right against self-incrimination, among others.⁵ Other common law countries such as Britain and Australia do not have such a Bill of Rights. Canada's Bill of Rights only became a part of its Constitution in 1982.

China: In contrast, the Chinese emperor received the mandate of power directly from Heaven, and thus it was the emperor, not the people, who had ultimate and absolute power in the country. Except for a relatively brief republican interlude in 1911, when Sun Yat Sen revolutionaries overthrew the Manchurian government, China has been dominated by a succession of rulers who have held absolute power over the people. Self-governance is a foreign concept throughout thousands of years of Chinese history and culture.

In the Chinese system of government the edicts of the emperors were enforced through military might. Today, the absolute power of the Chinese emperors has devolved to the Chinese Communist Party, which has been in power continuously since 1949. The formal structure of government is based on the State Constitution, adopted on December 4, 1982 by the National People's Congress. It is striking to observe that, unlike in the U.S., there are no special organizations established to enforce the constitution in China. All laws are reviewed and passed by the National People's Congress, that is, the Chinese Communist Party. Politically, the U.S. and Chinese systems could not be more opposite.

ECONOMIC SYSTEM

The economic systems of both countries have historically been very different as well. Private property rights of individuals are well-established in the U.S., whereas in China, property was initially owned only by the state. Production and distribution decisions in the Chinese economy were made by the national government through

central planning committees, while in the U.S. economy, economic decisions are made by private enterprise, not the government. In the U.S. system, the government's role in the U.S. economy is generally regulation, not ownership.

China: The proper relationship of state and the market is through the contract responsibility system. This allows enterprises to keep earnings above a certain target. The government realized that through ownership of property, it would be possible to instill responsibility into the decision making process as well provide motivation to do perform well. However, in August 1988, when a run on banks forced the government to change course, the CCP began to privatizing the state-owned enterprises. (SOEs). China is still faced with the daunting task of how to successfully share wealth with the masses of its citizens. It is estimated that as many as 800 million peasants out of a total population of about 1.3 billion may still be excluded from participating fully in the Chinese economic miracle. The Chinese economy is still not able to create capital for the masses. It depends on foreign capital. Unfortunately, foreign capital from the west essentially dried up after the Tiananmen Square incident. China then opened the door to foreign direct investment primarily from overseas Chinese. Instead of SOEs, it allowed people-owned companies for the first time, which changed the Chinese economy from a 'socialist planned commodity economy' to 'socialist market economy'.

The U.S.: The social, political, economic and legal systems of the U.S. are based on a culture of trust established through centuries of reliance on formalized institutions, governing documents and judicial, legislative and executive processes established from the inception of the country, collectively referred to as Rule of Law. On the other hand, China's legal institutional framework is much less established and certainly no where near as independent. Trust in China is established much more through personal relationships than reliance on institutions. The philosophical basis of government in the Chinese system stems from Confucianism which states that although the subjects should always obey the ruler, the ruler also has a responsibility to be benevolent and caring towards his subjects. Therefore, the power of Chinese rulers is directly tied to their ability to maintain social stability.

CAPITALISM REQUIRES RULE OF LAW

India, China and Russia tried socialism to run their economies and in the end, all three countries discovered that socialism did not bring widespread prosperity to their populations. India and China have been moving away from their socialist economies since the late 1970s. Russia has been moving towards a market economy since the disintegration of the Soviet Union in 1990. As one noted economist observed:

*Capitalism stands alone as the only feasible way to rationally organize a modern economy. At this moment in history, no responsible nation has a choice.*⁶

According to this economist, a Peruvian named Hernando de Soto, what prevents capitalism from working outside of the Western countries to raise the living standards of the poor in non-Western countries is that assets held in non-Western countries do not have the benefit of established Rule of Law, which would protect their property rights so that they could turn their assets into capital. He correctly pointed out that people in non-Western countries work just as hard as people in Western countries, and they definitely save more than people currently do in most Western societies, but because there is no Rule of Law, they cannot create capital. For example, people in non-Western countries are less likely to be able to get a mortgage on their property because there is no established system of private property rights that would be enforced by an independent judiciary in most non-Western countries. Thus, all of their hard work and savings remain "dead capital".⁷ According to de Soto "building capitalism without capital" only leads to the

*same shared social, political and economic problems: glaring inequality, underground economies, pervasive mafias, political instability, capital flight [and] flagrant disregard for the law.*⁸

CHINA'S BABY STEPS TOWARDS RULE OF LAW

Although the growth and development of China's cities have been dazzling, especially in the past decade, at least 700 million people out of a total population of approximately 1.3 billion, still mostly living in the countryside, remain poor. Such a large number of people left out of the Chinese economic miracle could become a

serious destabilizing influence. “China is alive with a sense of injustice fuelled by a huge gap between the rich and the poor”.⁹ In 1994 there were only 10,000 protests but by 2004, the number of protests had grown to 74,000 and involved 3.7 million people. As one commentator noted, the Chinese Communist Party has taken baby steps towards creating its own brand of Rule of Law for the Chinese economy.

Historically, China’s rules have used the law to control people, not to give individuals rights and freedoms so that they could operate independently. Their approach would be more accurately called Rule by Law, than Rule of Law. Until recently, the Chinese Communist Party followed this Rule by Law model. which has led to peasant lands being expropriated by corrupt local officials and unauthorized taxes being levied on some of the people. Perhaps in recognition that instability in the country is dangerous, the Chinese Communist Party has attempted to replicate some key concepts of the American brand of Rule of Law. Private property rights were recognized for the first time in China when it amended its 1982 Constitution on March 14, 2004. Other issues raised in 2004 constitutional amendment were liberty and human rights.¹⁰ The Chinese Premier, Wen Jiabao, said that these changes were needed in order to continue progress towards a more capitalistic economy, which required a more western-styled Rule of Law.¹¹ Chinese courts, too, are taking baby steps towards recognizing property rights and sometimes a Chinese court today might defend property rights and business contracts even against powerful state interests on the other side.¹² However, more often than not, these new judicial rights do not extend to challenges directly to the one-party state directly, such as a citizen-led campaign to enforce individual legal rights or to stop environmental abuses.¹³

One environmental activist who fought for years to stop chemical companies from dumping untreated waste in China’s third largest freshwater lake, Lake Tai, was recently convicted of blackmail and fraud even though the government has agreed to spend billions to clean up the lake. His criminal troubles arose when his protests against the collusion of authorities with the chemical companies attracted significant media attention. Even this activist said that his confession was extracted through torture, both the initial court and the appeals court have upheld his conviction.¹⁴

China now has more attorneys than ever before. Since 1990 the number of registered attorneys in China has increased five-fold to 165,000. Average people are sometimes able to hire an attorney to press for the enforcement of rights inscribed in the Chinese Constitution, as well as to resolve ordinary disputes between citizens.¹⁵ What is still missing from the administration of justice in China, however, is an independent judiciary. One judge who resisted local pressure and decided a case in favor of a non-Chinese company was soon dismissed from her judicial post by the government.¹⁶

Optimistically, according to the Communist Party’s State Council publication entitled “A National Implementation Programme to Promote Administration of the Country in Accordance with the Law”, the Chinese Communist government anticipates that it will take about ten years to put into practice Rule of Law, which would be by 2014.¹⁷

RULE OF FORCE IS ALIVE AND WELL IN CHINA

Although China is considerably more open than it has been in the past, China still does not have a free press if measured by U.S. standards. Chinese media sites are required to have a license from the Communist government and news labeled by the Communist party as dangerous or subversive is not allowed to be distributed.¹⁸ Internet bloggers and websites are required to register as a “news organization” and are not permitted to disseminate anything that might endanger the constitution, the state’s security, the nation’s dignity or anything that fuels superstition or threatens social order. What the Communist Party especially frowns upon are reports on riots, corruption by government officials or scandals related to workers or the environment that might threaten Communist Party control.¹⁹ One high-profile Chinese Internet commentator was convicted of “subverting state power”. Although he was given a suspended sentence and allowed to return home, his sentence was a warning to others that there are serious limitations on free speech in China.²⁰ Tens of thousands of Chinese state security employees monitor websites, chat rooms and even private email messages sent to home computers.²¹ Words like “democracy”, “capitalism”, “liberty” or “human rights” on the Internet trigger a bright yellow warning message that says “This message includes forbidden language. Please delete the prohibited expression.”²² Just before the Olympic games in

Beijing in 2008, thousands of taxis and many hotels were outfitted with listening devices that can be operated by remote control.²³ A school employee in Sichuan Province, who took pictures of the schools devastated by the powerful May 12, 2008 earthquake and put them on the Internet was sentenced to a year in a labor camp

In contrast to the constitutional protections for criminals prosecuted in the U.S. and in spite of the reforms China's has tried to institute in its criminal justice system, lawyers representing criminal defendants in China today still do not have the right to question witnesses, or even initially, to examine evidence.²⁴ China executes more people each year than the rest of the world together. While in 1980 only 21 offenses in China were punishable by death, this number jumped to 68 crimes by 1996 and there have been 4,367 confirmed executions.²⁵ These executions are swift, often within weeks of the verdict, and are ordered even when the judge knows that he is only rubber-stamping death sentences of defendants who had often confessed only because of torture.²⁶ Unlike in the U.S., capital punishment is sometimes used as a political tool. For example, after the head of the nation's drug and food safety agencies was found to have accepted bribes to approve fake medicines that led to 10 deaths, he was executed.²⁷

CHALLENGES AHEAD IN THE 21ST CENTURY

China faces a widening divide between the "haves" in the cities and the "have-nots" in the countryside. If the Communist Party is not able to push development fast enough to the countryside, this widening income gap could destabilize China. The U.S. is facing its own difficulties with income disparities in the first decade of the 21st century. Income disparities in the U.S. in 2006 were as wide as they were in 1928, just before the onset of the Great Depression. China's Shanghai stock market has lost nearly 50% of its value recently. U. S. banks have announced hundreds of billions of dollars in losses, with the likelihood that many more hundreds of billions of losses are yet to be recognized.

Both U.S. and Chinese banks are facing increasing pressure because of rising defaults. The solvency of the banking systems is being questioned by investors on both continents. Both countries are dealing with significant increases in inflation, stock market volatility, and a dramatic increase in commodity prices, such as oil, food and natural resources. China's rampant growth has resulted in the expropriation of land of rural peasants often by corrupt local officials and has resulted in serious environmental damage. There is increasingly the possibility that the U.S. may face a very long and very deep recession and that China's growth may stall, leaving it unable to provide the necessary jobs for those millions of people migrating from the rural areas to the cities.

COMPETITIVE ADVANTAGE IN THE 21ST CENTURY

Both China and the United States increasingly face headwinds in the new century of constant change, crisis and complexity. The American Rule of Law has been in place for 219 years; the social, political, economic and judicial institutions of the U.S. are well-established and have worked remarkably well over a long period of time. China, on the other hand, has had much more experience with dictatorship and Rule of Force than with Rule of Law over its extremely long history. If the U.S. experience is any guide, it will take China a lot longer than ten years to put an effective system of Rule of Law in place. Writing a constitution and laws is the easy part. Getting people to voluntarily submit to this Rule of Law and to accept its decisions, even when they are not popular, is the hard part. 'To do this, the citizens must have sufficient trust that their legal system will effectively administer justice fairly to the entire population, and not just a privileged few.

Rule of Law in the U.S. is not just an economic concept. Rule of Law is at the heart of the foundation of the American Republic from its very inception. It not only provides the necessary framework needed for a prosperous capitalist economy, it is also provides a necessary safety-valve in American society in times of extreme stress. During the Great Depression, although 25% of the population was unemployed and many in the population were suffering extreme hardship, the in-built flexibility of American Rule of Law enabled the governments to make enormous changes in a very short period of to maintain peace and tranquility in the population. Very quickly, taxes were raised on the rich, illegal immigrants were deported, and New Deal government programs were created to assist the populations most in need.

In nature, the living organisms that are able to self-organize and not rely on central command or supervision, such as the bees, are the ones that have survived over millions and million of years because they were able to adapt quickly to environmental change. If this measure is used, then American Rule of Law should enable the U.S. to be able to adapt quickly to the constant change, complexity and crises of the 21st century.

On the other hand, top-down, centrally controlled societies, while effective in the short-run, generally have not survived as well over the long-term when circumstances in their environments change, often very suddenly. Peace and social harmony in China has been maintained over the past several decades because it has benefitted from a furiously expanding economy that has been able to provide enough jobs for the millions of additional people who need jobs. No country in history of the world has changed as quickly as China has over the past two decades, so one can never rule out that it will continue to make astounding and remarkable changes in the decades ahead. As in any fast-developing economy, for all its successes China's breakneck growth masks a multitude of problems, from rampant corruption and devastating pollution to a frail banking system and the lack of independent courts to uphold the Rule of Law.²⁸

For the peace and prosperity of all of us, it is in all of our interests that China develop a workable Rule of Law sooner, rather than later, to enable it to adapt quickly to the constant challenges and changes of the 21st century.

ENDNOTES

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³ *Ibid.* "... We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed...."

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