

Corporate Governance in the Context of Globalization: Institutional Autopsy of the China Aviation Oil Case

Curtis J. Milhaupt
Katharina Pistor

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What we're trying to do

- Expose assumptions in canonical view of relationship between law and capitalism
- Show the problems with those assumptions (e.g. dramatic growth of Japan, Korea and China in absence of "rule of law")
- Account for different market-oriented legal systems on their own terms
- Re-think the relationship between law and capitalism in the context of globalization

Rethinking the Relationship

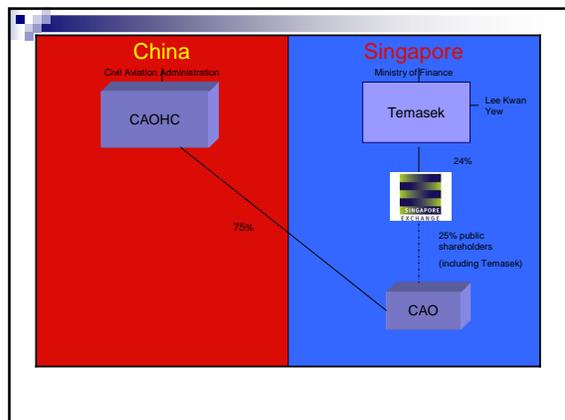
- Relationship is dynamic and multi-directional: "rolling relationship"
- Law can play multiple roles in support of markets:
 - Main functions: protection; coordination
 - Auxiliary functions: signaling; credibility enhancing
- Nonlegal mechanisms can also play these functions, and often do in high growth economies
- The "demand" for law is a crucial variable and so is identity and goals of constituencies that demand legal change
- "Supply" of law is not a neutral institutional endowment
- The outcome of legal reforms is the combination of the supply of legal solution and the multifaceted responses they receive
 - As such hard to predict

Analytical Framework Applied: "Institutional Autopsies"

- Firm-level scandal, failure, or controversy
- Systematic analysis of causes
- Situate event within country's institutional environment
- Evaluate response to firm-level event and larger institutional response
- Identify vulnerabilities of governance system

CAO Scandal

- CAO is product of restructuring of China's aviation sector, listed on SGX
- Large derivatives trading losses at CAO
- Chinese state-affiliated parent (CAOHC) places shares with investors to raise capital for bailout without disclosure of CAO's problems
- Singapore's government investment vehicle (Temasek) purchases some of the shares



Resolution

- Temasek bails out CAO when problems are disclosed
- MAS imposes modest civil fine on CAOHC
- Singapore court gives jail sentence to CAO execs
- No private enforcement by minority investors
- Upshot:
 - CAO saved
 - Singapore's reputation for good governance/law intact
 - China-Singapore economic relations (especially listing of Chinese IPOs on SGX) preserved

Singapore: Crony Capitalism and Rule of Law?

- Highly state-oriented governance structures, web of state-private sector contacts, personal relations key, little private enforcement of investor protections
- Yet Singapore is perceived as extremely clean, and a model of good corporate governance

Role of Law in China's Growth

- Is China an exception to canonical link between rule of law and economic success?
- False view of China's alternatives: Convergence or failure (e.g. Dam 2006)
- Law's functions: Coordination, Signaling
 - Trojan Horse quality of legal reforms
- Situation in governance system: complementary

The Singapore Model for China?

- "Asian Model" of law and growth?
- Can China emulate Singapore's combination of state involvement, (relatively uncorrupt) personal relationships, and reliable law enforcement?
 - Size: price setter or price taker?
 - Provider of what:
 - Market place for investors and listing firms?
 - Supply of companies for listing?
 - Bargaining power
 - Competition for capital?
 - Competition for investment opportunities?

Diversity of Governance Regimes in the Context of Globalization

- Chinese firms in the International Market Place
 - Chinese firms' listing on NYSE
 - Competition with LSE (esp. post SOX)
 - SEA exemptions
 - SEC weak in monitoring foreign firms post listing (Mexico)
 - Demand for Chinese State owned banks among foreign investors
 - Quality investments or market entry fee?
- Diversity
 - Marriages of different governance approaches
 - Comparative advantage:
 - competitiveness
 - responsiveness