

Foreword

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As a child in 1960s England, I well recall the public's association of 'Made in Japan' with poor-quality goods. 'Made in Hong Kong' gave people the same impression. This attitude was largely justified. As for the Peoples' Republic of China, nothing available at all was made there. It was a truly mysterious country. I wondered if I would ever meet a citizen of 'Red China' in my whole life.

It is astonishing how rapidly a country's image can change. Two decades later we could no longer be smug about Japan. It seemed that the future *was* Japan, an uncannily efficient land of robots, wonderful gadgets and elegant design. We had become envious and just a little fearful. In Britain whole industries gave up and shut down. Since then, though, the world economy has changed, Britain has recovered to some extent and while we continue to admire the country's consumer products we are a bit less sure about Japan.

China's image has certainly changed a lot: yesterday a nation of hermits, now (from the admittedly skewed perspective of this academic) a nation of international postgraduate students. But some prejudices are deep seated and difficult to shift. To many people, China remains the copier nation *par excellence*. An economy dedicated to knock-offs, that has prospered not by making new things but by perfecting the art of the rip-off, from the fake Rolex sold as a fake Rolex, to the fake Rolex passed off – convincingly – as the real thing.

That one human being out of every five lives in China is just one reason why China matters more than ever before. This is a country, comprising 20 per cent of us all, that has been undergoing a massive and rapid transformation which is probably unprecedented in human history. Tremendous challenges remain in this large, complex and diverse country, but many millions of people have already been lifted out of generations of poverty, with confidence that they and their children will never fall back into it. The prognosis for most of China's remaining poor, still a substantial proportion of the country's population, has never been

better. The scale of these changes and their consequences and the sheer size of the country mean that what happens in China affects the whole world.

None of this is accidental. The great British scientist and scholar Joseph Needham made the English-speaking world aware as never before of China's proud history as a scientifically and technologically advanced nation. So in many ways it has already gone to where it now strives to go. It has past experience to draw upon and the confidence to know that having risen to great heights in the past, it can do so again. Second, the country has undeniably brought to an end a difficult period in its long history when first it allowed itself to decline, in part through an arrogant isolationism, and become dominated by Western powers; and then followed such errors by adopting disastrous policies based on a tragic misunderstanding of human nature and of basic economics. For China the mistakes, weaknesses and poor decisions of the past have at least provided an excellent learning experience on what to do and what *not* to do in order to improve today's China.

China may have misunderstood itself in the past but it certainly no longer has a monopoly on misrepresentation. Much has been written on China in the West and certainly not all of it is true or well informed. Indeed, much of the literature is anything but. Recent narratives do tend – correctly – to acknowledge China's remarkable progress, and there is much admiration for the country in this respect. But often they go on to make one of two highly questionable assumptions. One is that as an inherently imitative people whose economy is based on mass production of goods based on foreign specifications, low quality knock-offs and on the backs of overworked, unskilled and semi-skilled labour, its spectacular growth rates are unsustainable. Countries more culturally disposed to be creative will inevitably catch up. Of course, as economies mature economic growth rates *will* decline, and this will happen to China. Inevitably, the catcher-uppers will themselves be caught up by others. But it is unlikely to be because China is uncreative (of course it is!), but more because of increased foreign competition in both cheap mass-produced goods at one end, and high-technology goods and services at the other, and also the imperative to distribute wealth as well as to create it. Alternatively, commentators go to the other extreme and uncritically assume that China is destined to achieve global domination in a very short time.

The first assumption is of course factually incorrect, and insulting. As this book shows, China is increasingly innovative and is putting in place sound legal and regulatory institutions to replace yesterday's knock-off economy with tomorrow's innovation-based economy. There is a long

way to go but considerable progress has been made. As for the second assumption, it may well happen but we really cannot be sure, besides which China is on a long journey, not a day trip. Absolutely nothing is guaranteed. You can have a population of hard-working, creative and talented people but without *continuous* good policymaking, stable government, effective institutions and open debate, none of that is sufficient. Flexibility and pragmatism are essential too. Today's effective solutions may turn out to be tomorrow's dysfunctional laws and policies. The law of intended consequences is inescapable, especially in the face of complexity. Omniscience is a fantasy, and government planners need to understand this. Predicting the future is a hazardous game. What we can say with assurance, to which this excellent and highly informative volume amply testifies, is that China's remarkable resilience and determination to strike its own path towards development is paying dividends and the future for the country is bright. Of course, we in the West are not usually well disposed towards the one-party-state system of government and doubt that such political systems can provide sufficient space for criticism and accountability. The facts remain, though, that poverty reduction has been substantial and that is something unequivocally to be admired, and that political space for open debate on economic and other issues is expanding.

What of intellectual property? As this book makes clear, one must take a holistic view when it comes to fostering innovation. Intellectual property rights are very important but they comprise just a few items on a lengthy menu of legal, regulatory and policy forms intended to enhance, organize and exploit the creativity of the human mind for the benefit of the nation and ultimately, one would like to think, humankind in general. Nonetheless, the way that they are designed – and here I talk not just of statutory law, but the institutions and the whole legal and regulatory structure – has major economic and social implications, especially for developing countries which are largely importers of legal norms, of copyright, patents, trademarks etc. that evolved in Europe over more than three centuries. As the African access to medicines debate of the late 1990s and early 2000s shows, the stakes can be enormously high. Developing countries like China have had to transplant internationally agreed norms wholesale without much opportunity to assess their likely impacts on economic growth and human welfare.

Another point to make is that we in the West must now dispense completely with the arrogant notion that China is nothing more than a pirate nation, one of the three members (along with India and Brazil) of a group denounced by a self-righteous Washington lobbyist as 'the axis of IP evil'. Undoubtedly considerable enforcement problems remain but

China has made a lot of progress in a short time, partly in response to external pressures but also because transitional economies becoming more *domestically* innovative cannot afford to let uncontrolled piracy continue. An article in *The Economist* noted in 2001 that ‘countries tend to clamour for strong patents once they have an industry to protect’. The same goes for copyright, trademarks and industrial designs.

I have a few words to say also about culture and intellectual property. It is often assumed that non-Western cultures have no need for, or even understanding of, property concepts in the context of knowledge, technologies, cultural works and goodwill. Therefore intellectual property rights, because of their Western origins, belong to Western culture and are thus alien to populations such as the Chinese and Indians (as they are said to be to indigenous peoples like the Maori of New Zealand and the Inuit in the Arctic). This argument has been used politically in strategies that I personally have some sympathy for. But to suggest they have no relevance or utility is incorrect and one must simply let go of convenient untruths. As Ken Shao’s work demonstrates, China has a long history of intellectual property jurisprudence and no doubt many other nations and non-Western people and populations do too.

A final observation on intellectual property is that Chinese enterprises are often associated with filing poor quality patent and utility model applications. There is probably a great deal of truth in this, and the fact that the Chinese government provides incentives for firms to file applications in China and overseas may not entirely help. Quality is ultimately more important than quantity. However, this is likely to be mainly a short-term problem. The fact that more and more United States and European patents are going to Chinese firms and that the State Intellectual Property Office (SIPO) is now a well-respected institution which cooperates with leading IP offices elsewhere leads one to suppose that seeking to acquire patents whose quality falls below the international standard is becoming both more difficult and a less attractive business strategy anyway.

The unavoidable question arises of what other countries can learn from China. This is a difficult one. There is nothing typical about China as a country. It is a large developing country as are India, Brazil and Russia, its fellow BRIC members. But the similarities end there. When South Korea developed rapidly from the 1970s, it adopted many policies from its close neighbour Japan and adapted them to suit its own circumstances. The two countries are obviously quite similar culturally and while their relationship has not always been a happy one, they undoubtedly have close historical ties. Whether the Japanese model is workable in, for example, Ghana, is another matter entirely. In terms of technological

catch-up with the West, China has probably gone further than those three countries and in that sense at least, it sets a good example for what can be achieved, which other countries should study to their advantage even though they will have to find their own way. To anybody wishing to learn more about the 'Chinese way' and to better understand its advantages and disadvantages, this book is an excellent place to start.