

***FINDING THE DRAGON PEARL:  
AUSTRALIA-CHINA CO-PRODUCTIONS IN THE “GOLDEN AGE”  
OF CHINESE FILM***



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## AUTHOR'S DECLARATION

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Cover Image: The Dragon Pearl (2011), Official Movie Poster

## Abstract

The Australia-China Co-production treaty ratified in 2007 forms one of five that the Chinese government has agreed including Canada, Singapore, France and Italy. Under the treaty, the Australian film industry has preferential access to the Chinese market. The growing importance of the Chinese market to the Australian film industry can be understood as the cultural expression of a broader shift in economic and political relations. Despite the importance and rich potential of the Chinese film market, the dynamics between and within institutions that comprise the market are complex, variable and insufficiently understood. This paper draws on the scholarship of Elinor Ostrom to examine the complex systems of the Chinese film industry as an important starting point to understand how the Australian film industry can and should engage.

## List of abbreviations

ACFIF:	Australia-China Film Industry Forums
Austrade:	Australian Department of Industry and Trade
BC:	Beijing Consensus
CEPA:	Common Economic Partnership Agreement (China & Hong Kong)
DFAT:	Department of Foreign Affairs
HI:	Historical Institutionalism
IAD:	Institutional Analysis & Development
ITM:	Informa Telecoms & Media
MEAA:	Media, Entertainment Association of Australia
RCI:	Rational Choice Institutionalism
SI:	Sociological Institutionalism
SARFT:	State Administration for Radio, Film & Television, China
SPAA:	Screen Producers Association of Australia
WTO:	World Trade Organisation

## Introduction

In 2011, the Australian film industry celebrated the release of its first treaty co-production between Australia and China, *The Dragon Pearl – Finding Courage When No-one Believes*. A tale that weaves history and adventure, *The Dragon Pearl* tells the story of two teenagers Ling (Li Lin Jin) and Josh (Louis Corbett) who join their respective parents, colleagues Dr Li (Wang Ji) and Chris (Sam Neill) on an archaeological dig in China. The curious teenagers stumble upon a 2000-year-old Chinese dragon trapped beneath the ruins of a temple. Initially terrified, the teenagers befriend the dragon, learning that it would be trapped for eternity until it recovered the source of its power, the Pearl. Faced with their parents' disbelief, the two teenagers embark on a quest to return the pearl to its rightful owner. The teenagers enlist the help of an American archaeologist, Philip Dukas (Robert Mammone), who secretly plots to seize the pearl for his own sinister purposes. Armed with courage and conviction, the two teenagers outwit Dukas and help the Chinese dragon recover the source of its power and assume its former glory.

The release of *The Dragon Pearl* marked a critical achievement for the Australian film industry. Faced with the diminishing access and size of its traditional markets in Europe and North America, main industry and government bodies such as Screen Australia are reorienting their strategy and investment programs to support Australian film-makers to access emerging markets across Asia and Latin America. The 'pearl' within the strategy is one of the largest and potentially lucrative markets in the world: China. Since the launch of *The Dragon Pearl*, the Australian film industry has

celebrated the release of *33 Postcards* (2011) by director Pauline Chan, and anticipates the release of at least four projects in 2012–2013 including *One Night of Madness* (Money Street Productions), *The Pulse* and *Gold Road*, with talks underway for the potential follow-up film *Dragon Pearl II*. The engagement with China serves the twin aims of Screen Australia’s mandate – to support the commercial development of the Australian screen industry and to promote nationalist objectives, including the promotion of Australian culture, stories and talent.

The Australian film industry’s engagement with the Chinese market may determine the success, and perhaps the survival of the Australian film industry. Coined the “Golden Age” of Chinese cinema, the rapid development of the Chinese film industry and market has run in parallel with China’s ascendancy as a global economic, political and social force. With more than 6,000 screens, more than 387 million TV households and box office revenues of over 10 billion yuan (€1.13 billion). China is now the second largest producer and consumer of films in the world (Business Wire 2011).<sup>1</sup> Cinema construction has been accompanied by the extension of the Chinese film industry’s reach across multiple platforms with a focus on leading-edge technology (ITB 2012: 86). The meteoric growth in viewing platforms and outlets has been matched by investment in production, with over 526 feature films produced in 2010 alone, more than 15 per cent higher than the preceding year (Business Wire 2011).

The Australia-China Co-production treaty ratified in 2007 forms one of five that the Chinese government has agreed including Canada, Singapore, France and Italy. Under

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<sup>1</sup> TV Audience Figures reflect 2010. The Chinese government aims to reach 500 million.

the treaty, the Australian film industry has preferential access to the Chinese market. Co-productions play a prominent role within the Chinese film market, with more than fifty produced each year (Screen Australia 2010). Considered a domestic product, treaty-based co-productions serve to circumvent the Chinese Government's strict import quotas on international films, and thus facilitate market access for smaller and independent ('indie') players. Despite an environment described as "strictly regulated and constrained" the potential financial rewards for the co-production partner are significant. For a small domestic market like Australia, successfully securing a co-production arrangement can determine the financial viability of a film project.

The growing importance of the Chinese market to the Australian film industry can be understood as the cultural expression of a broader shift in economic and political relations. A resource-rich, liberal-market economy, Australia's prosperity has become increasingly entwined with the meteoric growth of the Chinese economy and its demand for energy and resources. In terms of export income, China is now Australia's largest trading partner, accounting for 13.2 per cent of Australia's two-way trade (DFAT Website, 2012). Trade with China has eclipsed trade relations with the United States. Dominated by resource and energy exports, China's trade with Australia has been accompanied by a number of positive spillover effects including a significant boost in the service sector, including education, tourism and cultural industries exports – reflecting rising domestic incomes in China (Asialink 2011: 7). Efforts are being made to realise the potential benefits for the Australian film industry. Recent success in the co-production market follow considerable efforts to engage the Chinese film market, from the signing of the co-production treaty in 2007 and the launch of

Australia-China Film Industry Forums (ACFIF) that supported film industry delegations to Shanghai in 2010 and 2012.

Despite the importance and rich potential of the Chinese film market, the dynamics between and within institutions that comprise the market are complex, variable and insufficiently understood (Wells 1998: 815; Grey 2012). As Beijing-based attorney, Matthew Alderson remarked: “People come here with the assumption that conditions in China will be the same or similar to the West. This is a fundamental error that film producers make” (Counsel, Harris Moure, Beijing, SPAA Seminar 16/11/2011). The Australian film industry must learn and adapt to the distinct cultural logics and commercial differences of working in China if it is to be successful in the Chinese film market. As one interviewee reflected: “We haven’t got the formula right yet...we need to rethink our whole approach” (Interview with Geoff Brown, Executive Director, SPAA 2012). The need to fundamentally ‘rethink’ Australia’s strategy with the Chinese film industry should serve to explain and form the basis to overcome the “frustration”, “dead-ends”, “road-blocks” and “disappointments” encountered in China in order to realise the opportunities in a market described as both “complex” and “sophisticated”.<sup>2</sup> Careful assessment and reflection of the broad diversity of experiences and literature on the Chinese commercial environment can serve the Australian film industry to respond to the core concern of this paper:

*How can the Australian film industry adapt its strategies to the ‘rules of the game’ in the Chinese film industry and market?*

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<sup>2</sup> Quotes sourced from personal interviews and panel presentations between 2011-2012. Unattributed by request.

As the Director of the second Australia-China Co-Production, *33 Postcards*, advised: “If you don’t do it by the book...that is when you get yourself into trouble” (Pauline Chan, SPAA Seminar, 16/11/2011). While this is broadly agreed, the contents of that book are relatively unknown. Very little scholarly attention has been given to ‘rules of the game’ that determine the different institutional logics of the Chinese film industry. The ‘rules’ are often obscured by reference to essentialist accounts of ‘cultural norms’ encountered in the commercial environment of China (Krug & Henrichke 2009: 82-83). Such perspectives also do not adequately account for the particular contours of the Chinese Government’s development path, censorship laws and industry protection arrangements.

To resolve this gap in the literature, the paper draws on the scholarship of Elinor Ostrom and her perspectives on polycentric governance structures as a basis for understanding the nature and form of the rules across multiple and overlapping scales of interaction. As is elaborated in the theoretical chapter, Ostrom’s game theoretic perspective incorporates the development of norms and historical context within the development and elaboration of institutional rules. The paper draws on primary sources, including interviews, seminars and industry data, and a wider body of literature that examines the soft power strategies of the Chinese government; the debate regarding China’s economic development model – the “Beijing Consensus”; and the related literature on the deregulation and privatisation of the Chinese commercial environment in order to build an understanding of the institutional dynamics and rationale of the Chinese film industry.

## Chapter 1. Theoretical framework

Understanding the institutions that comprise the complex ‘systems’ of the Chinese film industry provide an important starting point to understand how the Australian film industry can and should engage. Throughout this paper, Elinor Ostrom’s (1990) work on the polycentric governance arrangements serve as a framework to examine the interplay of rules within the formal and informal institutions of the Chinese film industry. Ostrom’s work offers a lens to understand the formation, evolution and logics of institutions within the Chinese film industry. Chapter 3 uses the co-production treaty to explore the sources of “constitutional rules” within the Chinese film industry, embedded within the so-called “Beijing Consensus” development model and soft power strategy of the Chinese Government. These rules are then fixed in Chapter 4 for the purpose of analysis, to further explore the operational and policy rules that govern the Chinese film industry. Finally, the paper concludes with an exploration of the strategies that the Australian film industry may adopt in relation to a more nuanced understanding of the ‘rules within rules’ of the game.

### 1.1 Polycentric Governance Arrangements

The literature of polycentric governance arrangements has its roots in a study of government arrangements on overlapping jurisdictions and authority in public service provision (V. Ostrom, Tiebout, and Warren 1961 – cited in Ostrom 2005: 283).

Ostrom (2005) has incorporated the notion into understanding how complex, adaptive systems evolve and function. In Ostrom’s (2005) terms, polycentric arrangements

comprise “not just one but multiple governing authorities at different scales” (2005: 283). In this conception, the “whole system at one level is a part of a system at another level” (Ostrom 2005: 11). The challenge for those encountering, or indeed studying, the system is based on multiple sources of authority rather than one authority that dominates all others (Ostrom 2005: 284). The study of the interaction of these units concerns the “degree and forms of nestedness of political actors within larger political systems. The patterns of interaction and outcomes depend on the relationships among governance actors at different levels and the problems they are addressing” (Andersson & Ostrom 2008: 72).

The practical application of polycentricity draws from Ostrom’s IAD framework. Ostrom asserts that the “hierarchically organised whole cannot be ‘reduced’ to its elementary parts; but it can be dissected into its constituent branches” (Koestler 1973:291 cited in Ostrom 2005: 11). Thus, in analysing the Chinese film industry it is important to consider the broader institutional arrangements in which it is nested, and from which it is fundamentally inseparable. Each elementary part represents a particular “node” that illuminates aspects of the broader context in which it is a constituent part (Ostrom 2005: 11-12). By extension, institutional rules that “proscribe, prescribe and permit” behaviour within the institutional setting are considered to be the complex residual of rules formulated and transferred from other, related institutional settings. Thus, rules are “nested in another set of rules that define how the first set of rules can be changed” (Ostrom 1990: 51). By implication, an understanding of institutional formation and change within a nested context is constrained or shaped by rules that are “fixed” at different levels within the institutional hierarchy.

The study of rules is central to Ostrom's conception of the institution, which she defines as follows:

*“Institutions can be defined as the sets of working rules that are used to determine who is eligible to make decisions in some arena, what actions are allowed and constrained, what aggregations rules will be used, what procedures must be followed, what information must or must not be provided, and what payoffs will be assigned to individuals dependent on their actions”*  
(Ostrom 1990: 51).

The notion of and preference for polycentric governance arrangements forms the basis for the development of Ostrom's Institutional Analysis & Development (IAD) Framework. A key strength of Ostrom's IAD framework is that it is both complex and comprehensive in the scale of component parts that “create the context in which a game is played” (Ostrom 2005: 6). The framework resists the “simplified model of an individual”, challenging the assumption of the “rational egoist” that dominates Rational Choice institutionalism theory. Broadly adopting the notion of “bounded rationality” familiar in North's (1990) work, Ostrom has developed the IAD on the basis of a “more eclectic (and classical) view of human behaviour” (Ostrom 2005: 110). The model thus attempts to develop “tools of analysis that reconnect the normative side of individual orientations with the calculation of individual benefits” (Ostrom 2005: 110-111). Based on a game theoretic concept, norms such as trust, fairness and reciprocation will inform decisions that are contrary to those predicted using a rational egoist assumption (Ostrom 2005: 112).

Ostrom's approach is particularly useful for examining the relationship between the central government apparatus and the multiple and layered interactions between state and non-state, and formal and informal institutions that comprise the Chinese film industry. Although Ostrom's work is centred on resource commons arrangements, her analysis is relevant to the broader scale of complex system problems, which exhibit characteristics of "cross-scale dynamics and feedback, self-organisation, multiple dynamics of attraction, emergence, uncertainty and change" (Armitage 2008: 8). The notion of nested arrangements departs from the dominant focus on *dualities* observed within the system, rather than understanding the dualities as being mutually constitutive. These dualities include observations about liberalisation and state control; and the reach and extent of the central government's authority across different spatial scales and sectors (Huang 2010; Kennedy 2010; Harvey 2005; Krug & Hendrichske 2008). The multiple redundancies and overlapping authorities that comprise polycentric systems thus contribute to our understanding of important characteristics within the system including "resilience, transformation, learning and adaptation" (Armitage 2008: 8).

The adoption of Ostrom's RCI approach offers an alternative insight to those drawn from the application of different institutional lenses within the literature on the Chinese film industry, and China's commercial and political environment. The emphasis on rules and incentives within a game theoretic construct offers a particular lens on the evolution, interaction and development of China's film industry in the context of the Beijing Consensus and its centrality to the soft power ambitions of the Chinese Government. Ostrom's game theoretic approach ameliorates the criticism of

the RCI perspective which says that it provides “de-contextualised analysis” (Armitage 2007: 8). The game theoretic construct incorporates the development of norms and historical path dependencies as learned through sequential and multiple interactions over time, thus “blurring the distinctions” between the historical and sociological institutionalist approaches (Shepsle 2006: 34).

The “blurring” of boundaries allows some, albeit not all, insights of key scholars to be incorporated as context to the analysis. It departs, however, from the framework adopted by Curtin (2007) who examines the Chinese film industry’s development from a Historical Institutional (HI) perspective. Curtin’s analysis offers an important perspective on the contours and continuities that have informed institutional development. His emphasises the linkages between the Chinese film industry and shifting tectonics of global economic arrangements as the source of path dependency and punctuated equilibria that defined particular moments of growth and stagnation (Curtin 2007: 21, 22). From a RCI perspective, the HI explanation for the continuity of institutional forms is an alternative way of expressing the point that “transaction costs of doing things differently is almost prohibitively high” (Rhodes, Binder & Rockman 2006: xv). Thus, an alternative institutional paradigm is not adopted until the costs of retaining the existing rules exceed the costs of change. The polycentric governance perspective also offers an alternative explanation for the relative stability that characterises the Chinese institutional arrangements, on the basis of multiple redundancies across relatively separable, yet embedded domains.

The RCI approach emphasises the role of rules rather than norms within its framework. This again departs from a dominant portion of the literature on the

Chinese commercial and political environment, which emphasises the role of culture and cultural norms as the primary way to explain differences in institutional design and behaviour. This includes Jacobson (2012) who uses ‘Confucian’ values to describe aspects of Chinese entrepreneurship in the film industry and Peng (2012) who argued that the opacity within the Chinese film industry was due to a lack of norms (Jacobson 2012; Peng 2012). Norms are not discounted as an important variable within the approach adopted by Ostrom, but her approach does enable the interrogation of ‘cultural values’ rather than for these to be taken as a ontological given. Like the HI perspective, the focus on norms and culture offers an important insight into the cultural logics that inform the ‘bounded rationality’ of different agents encountered within the institutional setting of the Chinese film industry. In accordance with evolutionary game theory, Ostrom considers norms and values as inherited or generated from multiple interactions, nested within cumulative interactions across different arenas defined within time and space (Ostrom 2003: 40). From the game theoretic perspective, culture is considered a lens that may be drawn upon to “solve coordination and motivation problems related to economic activities” (North 2005 cited in Krug & Hendrichske 2008: 83). In this manner, historical and cultural context may be incorporated in the RCI analysis.

## **1.2 Institutional Change within Polycentric Governance Arrangements**

The application of a polycentric lens to observe processes of institutional change lends itself to a more complex understanding of institutional change that departs from the ‘bottom up’ or ‘top-down’ explanations for changes in and relevant to the Chinese film industry. Such explanations are richly developed in the literature on the Beijing

Consensus (BC) – a model that characterises the economic development of China. The top-down approaches emphasise the role of authoritarian government as having command and control over the change processes witnessed within the Chinese film industry. The authoritarian system is attributed to the meteoric growth of China, facilitating state planning and more efficient decision making when compared to democratic systems (Ramo 2004: 4, Huang 2010: 40). The capacity for state planning, decision-making and implementation, Ramo argued, underpinned China’s modernisation process and was the basis for rapid development of the Chinese economy and dramatic reductions in poverty across the population (Ramo 2004: 4). Within this conception, the meteoric growth and development of the Chinese industry is at the behest of state control.

Evidence of bottom-up reforms, however, problematize the top-down vision by challenging the role and extent of central government control over China’s development path. Two notable contributions include Huang’s (2010) notion of “*co-existence*” and Krug & Henrichscke’s (2008) “*co-evolution*” which both unpack the state as an ontological variable, revealing the complexity of institutional arrangements that resist analysis of the state as a homogeneous source of power, authority and change. Huang argued that the Beijing Consensus is an evolving model that has become dominant following the application of two distinct and competing economic models within China (Huang 2010: 33). The first model was linked to financial liberalisation, political opening and grass-roots enterprise development; and the second model is “more statist in orientation” with “emphasis on financial and political controls and favouring the state-owned enterprises” (Huang 2010: 34, 39). The existence of multiple models within China’s development path explains the apparent

contradictions observed within the Chinese film industry, including government policies that led to greater fragmentation of the film industry and openings for foreign capital investment in cinema construction and film production at the same time as the central government of China increased market protection and control (Screen Australia Delegation Report 2010).

Along a similar vein, Krug & Henrichscke (2008) argued that different levels within China's institutional framework "co-evolved". In this manner, China's development path emerges from the *interaction* of "top down" (or macro) and "bottom up" (micro) levels. The co-evolutionary process is captured in the interaction micro-macro-levels structured by "intergovernmental institutional competition, business-to-business and business-to-government networking and public-private corporate governance" (Krug & Henrichscke 2008: 81). An important finding, however, was that despite the vastly heterogeneous business environments at a local level, there was a "coexistence of local business systems with the integration of markets, a coherence of political institutions and conformity in behaviour which seem part of an emerging Chinese business system" (Krug & Henrichscke 2008: 82). Their findings suggested the observed 'micro' realities were "held together by an overarching institutional architecture" (Krug & Hendrichscke 2008: 81).

The polycentric lens offers an alternative explanation for the phenomena observed by Krug & Henrichscke and the co-existence of different forms described by Huang. Adopting a polycentric lens, the interaction and processes of shaping and reshaping occur as the results of complex interaction of structure and agency within institutional hierarchies. This approach resists arbitrary distinctions across spatial scales, such as

‘local’ and ‘national’ or ‘micro’ and ‘macro’. The institutional forms are rather the complex residual of the other institutions within which they are nested, moving along the continuum of spatial scales. This lens regards China’s film industry as inextricably intertwined with “institutional arrangements operating at other governance scales...(that) also have critical roles to play” (Andersson & Ostrom 2008: 71). In this manner, both the bottom up and top down perspectives can be synthesised, and the inter-relationships between these structures become more evident.

### **1.3 Hierarchy of Rules within Polycentric Governance Arrangements**

Ostrom’s notion of all rules as being “nested within other rules” emerges naturally from her model of polycentricity. The nested nature of rules opens up the possibility of multiple change paths within nested institutional arrangements, drawn from differentiation between multiple forms and hierarchies of rules that are themselves nested in other forms and hierarchies (Ostrom 1990: 50-51). Ostrom differentiates between three main forms of rules. These are described as ‘operational rules’, ‘collective choice rules’ and ‘constitutional rules’. Operational rules govern quotidian management such as how, whom and where to share resources and exchange information, and the administration of rewards and sanctions (Ostrom 1990: 52). The collective choice rules “adjudicate” operational choices, setting the parameters for the management of the resource in question (Ostrom 1990: 52). The constitutional rules are the overarching layer that determines “who is eligible” and “specific rules to be used in crafting the set of collective choice rules that in turn affect the set of operational rules” (Ostrom 1990: 52). Although there is a hierarchy of rules, changes

in the daily ‘operational’ level will depend on the “capabilities and limits” of the higher and deeper levels (Ostrom 1990 51-52).

For Ostrom and her contemporaries within the RCI school, rules and incentives define institutions and set thresholds for participation (Rhodes, Binder & Rockman 2006: xiv). In systems such as China, which is based on a strong central government and fragmented power delegated at the local and provincial level, the rules also set multiple veto points. Rules and their institutional manifestation may be regarded as comprising the result of a power struggle (Rhodes, Binder & Rockman 2006: xiv). They may also reflect pareto optimal conditions where a dominant group defines the rules to their benefit, but minority groups also fare well under the conditions (Rhodes, Binder & Rockman 2006: xiv). These different dynamics may be observed within Huang’s characterisation of the Beijing Consensus as being the dominant among competing models for China’s development.

#### **1.4 Rethinking the “Beijing Consensus” from the perspective of Polycentric Governance Arrangements**

A polycentric perspective offers a different lens to consider the behaviour and interaction of institutions within the Chinese film industry that are attributable to the Beijing Consensus. For the purpose of this paper, the definition of the Beijing Consensus is derived from Ramo’s (2004) eponymous article which described three distinctive features of the Chinese Government’s development path: its *flexibility* and *pragmatism*, teamed with a “*ruthless willingness to innovate and experiment*” (Ramo 2004: 4-5; Huang 2010: 31; Li 2009: 298). The paper also draws on the ten principles

that commonly define the development strategy of the Beijing Consensus which were expanded on the basis of Ramo's original thesis (Li, Brodsgaard & Jacobsen 2009).

The main principles include: the commitment to a stable political environment; localisation of best practice; combination of market and plan; self-reliance; constantly upgrading industry; and indigenous innovation (Li, Brodsgaard & Jacobsen 2009; Li & Worm 2011: 80).

Comprising a complex structure with multiple redundancies and overlaps the complex structure of the Chinese Government and the nested institutional arrangements of the Chinese film industry comprise polycentric arrangements. Thus some of the behaviour and interactions of institutions under the auspices of the Chinese Government may be attributed to and enhanced by the *institutional form* rather than just the deliberate strategy assigned to the 'Beijing Consensus'. In accordance with polycentric arrangements, each unit of governance has "independence to make and enforce rules within a circumscribed domain of authority" (Ostrom 2005: 283). The advantage of localised scale is the flexibility to innovate, building rules and incentives according to local conditions. The overlapping nature of polycentric systems means that information and innovation can be readily exchanged, so that successful "policy experiments" can be shared, but where systems fail, "there are larger systems to call upon – and vice versa" (Ostrom 2005: 283). Further, the attribute of *gradualism* is inherent in the system. Multiple centres of authority mean that policy changes from the centre will be subject to a process of experimentation across multiple jurisdictions, a process that "usually will be slow" (Ostrom 2005: 284).

This is not to suggest, however, that the polycentric arrangements offer a veritable utopia for institutional design. There is “no guarantee” that the design and enforcement of rules at multiple levels will be universally optimal (Ostrom 2005: 284). As Ostrom explains: “one should expect that all governance systems will be operating at less than optimal levels given the immense difficulty of fine-tuning any complex, multi-tiered system” (Ostrom 2005: 284). Similarly, the smaller domains may be the site of predatory behaviour in the form of local tyrannies, stagnation or unresolvable and escalated conflicts. The key advantage is that experimentation and innovation or ‘failures’ are localised to a smaller scale, preventing failure across a large scale (Ostrom 2005: 284). Thus the key attributes of China’s polycentric governance arrangements and the Beijing Consensus are in alignment. So too, the advantages of polycentric governance and the central aim of the Beijing Consensus: stability.

## Chapter 2. Methodology

The methodology combines a select number of semi-structured interviews, industry seminars and email correspondence with extensive research of primary and secondary documentation, which forms the basis of analysis. The interviews and seminars added a more nuanced interpretation of strategy documents, economic data and provided a better picture of how the anticipated future relationship with China is shaping current policy, production and practices. From an institutional perspective, insights gained from the interviews added a lens to understand how institutional structures and agents were or were not interacting to shift rules, norms and values towards greater alignment with the Chinese film market. The interviews helped to identify some of the institutional resistances to greater engagement with China and articulate the challenges of engagement.

The semi-structured interviews were conducted with key practitioners and policy makers within the Australian film industry. Selected interviewees were participants in the 2010 and 2012 delegations to the Shanghai Film Festival funded by the Australian government through Screen Australia, such as Chris Oliver, Senior Manager, State and Industry Partnerships, Screen Australia; Geoff Brown, Executive Director, Screen Producers Association of Australia; and Pauline Chan, Director of *33 Postcards* (2011) provided candid insight into the challenges faced by filmmakers working in China. Industry seminars from key people including Mario Andreacchio, Director of the first Australia-China treaty based co-production *The Dragon Pearl* (2011) and founder of the Australia China Film Alliance in 2011; conversations in 2011 with

director Carmelo Musca who has a slate of Australia-China co-productions in development after the release of *Deep Sleep No More* (2011) were drawn upon for additional context. In addition, interviews were conducted with senior representatives from the Canadian Industry for comparison, including Brigitte Manneau, Director of International Affairs, Telefilm Canada.

The format for semi-structured interviews was adapted to the particular interviewee, their role and experience, and information already available in the public domain. In some cases, for example with Chris Oliver, his thoughts, reflections and opinions can be obtained via his many seminars and publications. The interviews were based on elaboration of particular points, and relating these back to the institutional framework in order to better illuminate aspects of the theoretical lens such as the interplay of structure and agency within and between the institutions. The format for the interviews was guided by informal scoping discussions with producers in the industry including: Kylee Ingram, Director, Australian Documentaries; John MacFarlane, Editor of SBS Documentary Online; Susan MacKinnon, CEO of Documentary Australia Foundation (DAF); and Andrew Ogilvie, CEO & Founder of Electric Pictures and Board Member of the Screen Producers Association of Australia – all of whom are regular attendees at international markets.

Language was a barrier to a greater appreciation of the Chinese perspective within the frame of research. For this reason, the core focus of the research is on how the Australian film industry is adapting its policies, practices and production as it seeks greater engagement with China. To attempt to bridge the gap, however, I conducted interviews or listened to seminars with key players who reside and work in China and

are more integrated in the culture. This includes Megan Elliot from XMedia Lab, Beijing, and Grant Dooley, former Counsel General in the Australian Embassy, Beijing, who had a key role in negotiating the Australia-China co-production treaty agreed in 2007 and has worked extensively in Asia, particularly China since 1987; Chang, Kevin (2011): Secretary General of the Asian-Pacific producers' network at Association of Film Commissioners International and Yung Chang Director of *Up the Yangtze* (2007) and the forthcoming China-Canada Co-production *China Heavyweight* (due for release in 2012). In addition, translated testimonies, interviews and resources published by relevant institutions in the Chinese film market including State Administration of Radio, Film and Television (SARFT) and the overarching body, China Film Group (CFG) have also been examined where available.

The first hand perspectives gained by interviews is buttressed by extensive recourse to primary resources and literature review that includes academic research alongside industry journals, blogs, online discussion forums and, where available, attendance and recordings of industry seminars such as the Screen Producers Alliance of Australia (SPAA) and international film markets including HotDocs (Canada), SunnySide (France), Cannes Film Festival (Fr) and AmerAsia (Canada). Institutional perspectives are available through reference to strategy documents, statistics and testimonials produced by the Australian Government's key funding and coordination body, Screen Australia, Austrade, the Australian Government Trade Commission, the Department of Foreign Affairs and Trade (DFAT), AsiaLink, Access Economics and the Australia-China Screen Alliance. This includes Screen Australia's response to the Department of Foreign Affairs and Trade Issue Paper entitled "Australia in the Asian

Century” (2012) and reports from the three Australian film industry delegations to China (2010-2012).

Finally, although discourse analysis is not a primary feature of the methodology or theoretical framework, it has been important to also review the productions made via Australia-China and Canada-China co-production partnerships including the Australian productions *Children of the Silk Road* (2008);<sup>3</sup> *The Dragon Pearl* (2011) *33 Postcards* (2011), and Canadian productions including *Forever Fireworks* (2007), *Wushu Warrior* (2007) *Way of Tai Chi* (2009) and *Iron Road* (2009) to gain a greater appreciation for the messaging and aesthetic of films. This is relevant to the institutional constraints that are contingent in the co-production relationships and reveals, to some degree, the manner in which the Chinese Government attempts to use film to project a positive or benign image of China in the world. Teamed with the other primary and secondary research data, these films reveal aspects of how China is framing a vision of itself abroad, across a multiplicity of genres.

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<sup>3</sup> Tripartite co-production arrangement between Australia, China & Germany.

### Chapter 3: Co-Production Treaty Arrangements – A Lens on Constitutional Rules within the Chinese Film Industry

*“Let our culture become our Great Wall!”  
Sun Ping (CPPCC 2007, cited in Zhang 2010: 390).*

The following chapter considers the development of formal rules in relation to the Australia-China co-production treaty. The institutional arrangements that support international co-productions in the Chinese film industry comprise collective-choice (or policy) and operational rules that define the policy space and determine the process routines. Obscured within the institutional arrangements are the ‘constitutional rules’ that form the context in which the lower-order rules are based. This chapter first examines the basis of ‘constitutional rules’ with reference to the Chinese Government’s soft power strategy and the developmental model of the Beijing Consensus. This is followed by an examination of organisational linkages, which determine the degree of ‘nestedness’ of the Chinese film industry in the broader institutional apparatus of the Chinese Central Government. The study of links within a hierarchy of institutions and institutional rules accounts for the commonalities that run across the complex arrangements that comprise the Chinese film industry.

While it is clear that the creative industries are “changing China” exactly *how* and *what* they are changing remains to be determined (Keane 2009: 432). Much attention has been paid to institutional reforms adopted by the Chinese Government since 2003 as evidence that the ‘ideological straight-jacket’ on the Chinese film industry is being loosened (Keane 2009: 432). The changes have not been insignificant. Cutting across

the film industry's production, distribution and infrastructure realms, the reforms signalled new rules of the game for the Chinese industry. Main features include breaking Central China TV's broadcast monopoly by issuing four permits for Pay-TV providers; devolving power from central to provincial broadcasters for deciding allotment of broadcast content; the inclusion of domestic private sector actors across distribution, production and cinema construction; and the 2007 decision to lift the ceiling of asset ownership by foreign investors from 35 to 49 per cent (Screen Australia 2010: 14; ITM 2012: 86). At a creative level, these reforms have been accompanied by the expansion of genres and formats beyond the traditionally safe 'history' and martial arts staple (MEAA 2004: 5).

Contrary to appearances, however, the experience on the ground is very different. As Mathew Alderson, warned: "People are bedazzled by China... (they) expect it is an exploding market that is liberalising. In fact, nothing could be further from the truth" (Alderson, SPAA Seminar 16/11/2011). Close examination of the relationship between the soft power strategy of the Chinese Central Government and the reforms adopted by the Chinese Government suggest, however, that these changes do not necessarily reflect a change in the *constitutional* rules that govern China's film and entertainment industry, but rather a change in *collective rules*. The constitutional rules both relate to stability and confer a level of stability by remaining unchanged, despite changes at the policy and operational level.

Regarded as the "ability to get one's way through the power of attraction and persuasion", the term "soft power" became common parlance within Chinese Central Government circles under the leadership of President Hu Jintao (Zhang 2010: 385,

387-388). The *purpose* of China's soft power strategy is intimately linked to Jintao's leadership and the "party's thinking and policies about the Chinese developmental path" (Zhang 2010: 384). The Chinese film industry is nested within a broader framework of soft and traditional 'hard' power relations that inform China's ability to pursue its economic advantage and growth ambitions (Li & Worm (2011: 85-86). A key source of accumulation and expression of soft power, the Chinese film industry is integral to the achievement of its overarching development agenda and has a central role in maintaining domestic stability and projecting a positive image of China abroad (Keane 2009: 433; Li & Worm 2011: 70-71; Ramo 2004: 4).

Under Jintao's leadership, protection of cultural industries was treated as an issue of national sovereignty (Keane 2009: 433). The Chinese Government matched substantial investment in the film and cultural industries with strong cultural protection policies. Concerned that their accession to World Trade Organisation (WTO) and Close Economic Partnership Arrangement (CEPA) in 2001 would herald an "invasion" of "destabilising ideas", the Chinese Government strictly quarantined their media and cultural industry (Zhang 2010: 388; 390; Keane 2009: 433; Curtin 2007: 26). The investment in reviving the Chinese film industry was matched with a purposeful institutional design and development of the Chinese Film Industry aligned to key principles associated with the Beijing Consensus (Screen Australia 2010; MEAA 2004). Alongside the core concern of stability, these included the localisation of best practice, combination of market and plan, constant upgrade and indigenous innovation (Li, Brodsgaard & Jaconsen 2009).

The concern for maintaining domestic stability and the management of China's image abroad serve as the building blocks for the collective choice (or policy) rules that structure the institutional arrangements of the Chinese film industry. The institutional arrangements that surround International Co-Productions are accompanied by a matrix of cultural protection policies that emphasise censorship which, in the context, serves as a proxy for stability. The Co-Production arrangements are one of four elements of industry protection adopted by the Chinese Government. The others are 1) censorship; 2) import restrictions; and 3) investment in leading edge technology for production and distribution. Aligned to the stability and promotion objective of the soft power strategy, the censorship provisions are the core institution in which the other industry protections are nested. The other three protections comprised the policy rules that gave the industry time to develop in accordance with "Chinese cultural values" (Keane 2002, cited in Keane 2009: 433). Starting with censorship, the next section will explore the four industry protections in order to differentiate between the hierarchy of rules, and institutional linkages in which rules are nested.

The censorship arrangements are enforced under the authority of the State Administration of Radio, Film and Television (SARFT).<sup>4</sup> Tasked with the administration and oversight of state-owned and private enterprises including China Central Television, China National Radio, China Radio International, industry organisations, productions studios and movie houses, SARFT has both extensive powers and scope to flex its muscle. SARFT has primary responsibility for ensuring that materials that "offend the sensibilities of the Chinese government or Chinese cultural standards" are censored (SARFT cited in MEAA 2004: 7). Both domestic

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<sup>4</sup> Chinese: 国家广播电影电视总局; Guójiā Guǎngbō Diànyǐng Diànshì Zǒngjú

producers and international film-makers who wish to access the Chinese market are subject to the same strict censorship requirements. International films made and produced for China are formally subject to a two-step process that requires the film producer to submit the script to attain permission to commence production, followed by a second step to gain permission to distribute to the Chinese film market.

In practice, however, SARFT's institutional architecture creates multiple veto points over the content of each film that appears in the Chinese market. Film-makers who engage with the Chinese film industry constantly encounter either subsidiaries or private enterprise with reporting responsibility to SARFT (Keane 2009: 432; Screen Australia 2010). Foreign entrants to the market partner with domestic players whose mandate, status and/or license to operate rely on familiarity with and adherence to the 'rules of the game' set by SARFT. Distribution arrangements remain particularly strict for foreign films, which may only partner with three state-owned enterprises: the China Film Group, Shanghai Film Group and Huaxia Film Group who share 80 per cent of the distribution market (Screen Australia 2010: 10). These restrictions are not applied to international co-productions, which can access the full range of China's 300 distributors. While this is an advantage, the entire creative process from development, production to distribution of a particular film is in partnership with a domestic partner from the Chinese film industry.

The multiple veto points reflect the strength of organisational linkages within the Chinese film industry. Despite the series of reforms within the Chinese film industry, commercial encounters with the reality of the institutional apparatus continues to be characterised by "institutional roadblocks" to freedom of expression and the "risk

aversion of public officials” towards the expression of “unconventional political views” (Ulfstjerne, 2008, cited in Keane 2009: 438). The ‘risk aversion’ is, in part, institutionalised via the structure of incentives within the industry that have created upward accountability system via the appointment of officials assigned by the party (Chien 2010: 69; Fox & Godement 2009: 36). Across economically decentralised arrangements, this approach has generated “stronger cross-regional cadres” that share ideas and strategies (Chien 2010: 69, Keane 2009: 436). As Ostrom (2005) noted, structured competition according to a set of rules can provide an efficient way to coordinate complex arrangements with large number of actors (2005: 55). The incentives and networks and strengthen the “nestedness” of institutions and reinforce rules across the Chinese film industry despite the heterogeneity of institutional forms, ownership structures and functions(Ostrom 2005: 55-56).

The extensive application of censorship laws demonstrates the extent to which the goal of domestic stability has permeated the rule hierarchy of the Chinese film industry. SARFT’s ‘cultural sensibility’ test has broad and often arbitrary application. While the stance on politically sensitive material such as Tibet and Taiwan are clear-cut, the cultural sensibility test has been invoked to deny clearance for reasons including scenes containing nudity (*Titanic*), unfavourable depictions of Chinese people (*Men in Black 3*), challenging authority (*Highschool Musical*), depicting ‘fringe’ activity (*Brokenback Mountain*) or vulgarity (*Borat*). Domestic producers are subject to the same rules as evidenced in the recent “voluntary withdrawal” of reality TV shows such as “Super Girl” from provincial television stations following a request by SARFT (BBC News 04/01/2012). International film-makers and studios who have attempted to ignore the detail of censorship controls have encountered

costly delays or been denied access to the market (Pauline Chan, Director 33  
*Postcards*, SPAA Seminar 16/11/2011).

The censorship arrangements pervade the second industry protection mechanism of the Chinese Government: foreign film import restrictions. Import restrictions imposed by the Chinese Government remain a key component of the strategy to protect the domestic film market from international competition. Current import quotas limit international film imports for domestic distribution to approximately twenty foreign films per year (Screen Australia 2010). The current restrictions are likely to remain in place despite the WTO ruling in 2011 that has advised the Chinese Government to lift the restrictions – they are yet to respond to the demand. Each year the import quota is dominated by film industry Goliaths such as Miramax, Warner and Fox, leaving little space for smaller players who lack the marketing and distribution capacity (MEAA 2004: 10).

Incentives and sanctions applied by the Chinese government have enforced adherence to China's censorship rules across multiple linked domains. The competition for inclusion in the import quota has led to modified standards among the top studios. Those competing for inclusion in the quota have a significant incentive to comply with strict censorship laws of the Chinese government across their international production slate. As per the experience of MGM Studios, the Chinese Government imposed a blanket ban on their titles after it produced *Seven Years in Tibet* (1997) starring Brad Pitt and David Thewlis. Although the film was never intended for the Chinese audience, the ban lasted many years, and was lifted only after considerable diplomatic leverage, market opportunity losses and legal expense (Ho 2011). Any

films starring Pitt or Thewlis are now subject to a life ban in the Chinese market – from *Thelma & Louise* to *Mr & Mrs Smith*. So too, all films produced by Scorsese are subject to a life ban after his 1997 film, *Kundun*, which depicted the childhood story of the Dalai Lama (Ho 2011). In each case, the Chinese film industry has set a clear signal to the global market that the Chinese film industry’s censorship rules were strict, consistent and enforceable (Ostrom 2005: 130-131). Teamed with the ‘hard’ economic power of the Chinese market, domestic censorship arrangements serve the ambition of the Chinese Government to promote a favourable image abroad.

Thirdly, the investment in cutting edge technology within the Chinese film industry is nested within the same constitutional rules. The rationale is simple. If the Chinese film industry remains ahead of the technology curve, it protects the domestic industry from foreign entrants and thus foreign ideas. Being ahead of the technology curve also enhances the Chinese film industry’s ability to build global market share and project a positive image abroad. Investments in state-of-the-art production facilities, cinemas and the adaptation of ‘blockbuster narratives’ to Chinese themes have formed been part of the China film industry’s emergence as a main competitor for international market share (Curtin 2007: 23; Keane 2010: 131). The Chinese Government’s concurrent investments in new and emerging technologies including 3D, animation, mobile technology and interactive games is leading a process of “structural adjustment of past practices” whose reach and influence reflects an ambition to influence the ‘rules’ of multiple linked domains (Curtin 2007: 25). So too, foreign investment reforms that allow greater minority ownership are a way to localise not only foreign knowledge, but also foreign capital.

The text of the Australia-China co-production treaty reflects an assemblage of collective choice, operational and constitutional rules. As a proxy for stability, censorship is the main rule in which other rules are nested and is subject to strict enforcement. The rationale behind the Chinese Government's preference for treaty-based co-productions is twofold: greater creative control over the image and presentation of China at home and abroad; and the ability to import the technical expertise of experienced filmmakers from countries with small yet vibrant film industries (Interview with Chris Oliver, Senior Manager, State and Industry Partnerships, Screen Australia 30/05/2012). Under the provisions of the treaty arrangement, the development, production, content and distribution of co-produced films are subject to strict guidelines and government oversight. A sample viewing of the nine successfully executed Australia-China and Canada-China co-productions reveals a particular narrative thread common to the films: triumph against adversity, hardwork and deference, the meeting (and appreciation) of cultures, and an emphasis on the long *durée* of Chinese history and culture.

The co-production arrangements localise not only technical expertise, but also leverage the relationships of co-production partners to access the global market – creating stronger linkages between the Chinese film industry and the rest of the world. Unable to rely on finance sourced from their domestic markets, smaller 'indie' players from countries such as Australia and Canada tend to be more accustomed to forging relations in the international market just to get their films made (Oliver 30/05/2012; Interview with Geoff Brown, Executive Director, 01/06/2012). This complements the Chinese film industry whose distribution and production networks are predominantly domestic. Rigorous rules applied to co-productions result in films that have appeal

both for the Chinese domestic market and abroad (Mario Andreacchio, Director *The Dragon Pearl*, SPAA Seminar 16/11/2011). Alignment with an 'indie' producer from Australia or elsewhere also confers greater credibility to co-produced films in a global market that has regarded Chinese films with some suspicion as a result of their censorship arrangements. In this manner, the Australian co-production partner serves as a creative and commercial interlocutor, reproducing constitutional and collective choice rules in new and linked arenas. This has important implications for the development of the Australian film industry and its own commercial and creative practices as it seeks to engage further with China.

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This chapter has explored the hierarchy of rules within the institutional arrangements of the Chinese film industry, drawing an important distinction between constitutional rules and lower order rules such as collective choice rules. Informed by the soft power strategy of the Chinese Government to preserve domestic stability and present a positive image to the world, the censorship rules represent a constitutional rule, and are thus an enduring feature across the institutional hierarchy of the Chinese film industry including arrangements relating to foreign import quotas, technology transfer and international co-productions. These rules are strengthened by the polycentric arrangements that are characteristic of the Beijing Consensus and specific government policy to build a matrix of incentives and sanctions appropriate to the hierarchy of rules. Key reforms identified as evidence of market liberalisation in the Chinese film industry should thus be interpreted not as a deep transformation of the industry

arrangements, but rather, as changes in strategy via collective choice or policy rules, in relation to the constitutional rule of censorship and, by proxy, domestic stability.

## Chapter 4.

# The Contract: Operational Rules within the Chinese Film Industry

*“To assume a contract has the same meaning legally and culturally in China as it does in the West...a fundamental error made daily in this country”.*

Mathew Alderson, Counsel, Harris Moure pllc, Beijing  
SPAA Industry Seminar, 16/11/2011.

When asked to explain the key difference between the Chinese and Australian film industry, the description of the Chinese as being “relationship driven” and their Australian counterparts as being “deal driven” continually emerges. The following chapter aims to explore this distinction with reference to the contract and its role in defining the operational rules that govern the relationship between co-production partners. The chapter commences with an analysis of the perceived utility of the contract to the commercial relationship from an Australian and a Chinese perspective. Drawing on Ostrom’s insights into polycentric governance arrangements, this chapter considers the role of the contract in relation to the Chinese commercial environment and the extent that the contract is ‘nested’ in the broader institutional sphere that governs activities within the Chinese film industry. This is used as the basis to investigate the limits of the contract as a means to define and enforce the operational rules of co-production relationships and alternative means to forge these arrangements.<sup>5</sup> Finally, the chapter considers the role of the informal institutions that manage transactions in the Chinese film industry and the part they play in shaping the collective choice and constitutional rules in which they are embedded.

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<sup>5</sup> While the focus is on the Australian experience, this chapter also draws on insights and experiences from Canadian counterparts to co-production relationships. Sharing similar legal and political traditions and a comparable film industry in terms of size and policy, the Canadian experience serves as a useful point of comparison and reflection.

Within the canon of transaction cost literature, the contract is considered the fundamental institution that determines the rules of exchange (Shepsle 2006: 34). Within the Australian legal tradition, the contract serves to set the terms of the commercial transaction. These terms form operational rules agreed by signatory parties, and deviation from the agreement is enforceable via recourse to legal institutions in which the contract is firmly nested. The availability of third party enforcement creates predictability for the agreement, reducing uncertainty and transaction costs, thus generating capacity to commit to long-term agreements (Ostrom 1990: 17). In Australia, experience with contracts accumulated by individuals and collectives across time has contributed to the emergence of norms that surround contract arrangements. In accordance with this tradition, working or operational rules tend to strongly resemble the written rules of the contract (March & Olsen 2006: 13; Ostrom 1990: 51). These cumulative norms inform the assumptions that define the importance placed on the contract by Australian filmmakers and production studios that are entering into agreements with Chinese counterparts.

Unlike Australia, the fundamental institution that determines the rules of exchange in China is not the contract. Based on customary law, China's legal system is distinct from the Australian common law system and the civil law system of the US and Europe. In the Chinese context, the written contract as an institution of exchange is only weakly linked to the context. The process to enforce even simple contracts is "absent and ineffective" within China's legal system (Tao, Z & Zhu, T 2001: 1). Enforcement typically involves seeking support from top-level bureaucrats or their advisers to act as an advocate for a fair outcome if one is not achieved under the civil

code (Fox & Godement 2009: 36). This is usually pursued discreetly, if at all, as there are significant disincentives for partners to seek restitution through the courts or political system, fearing that such action will irreparably damage the relationship and thus long-term access to the market.<sup>6</sup> The insertion of jurisdictional clauses to enforce contractual arrangements is also viewed unfavorably. As the director of *The Dragon Pearl*, Mario Andreaachio, noted, “if you add those provisions you can kiss goodbye to the deal” (SPAA Seminar, 16/11/2011). In China, the deals are made on Chinese terms.

Lack of adherence to the written contract does not reflect a capricious attitude towards operational rules in the Chinese commercial context. Rather, the partners to the contract from Australia, Canada or elsewhere have misinterpreted the contract as a statement of agreed rules, nested in institutional arrangements that do not exist in the Chinese context. This is reflected in the observation by Mathew Alderson that “for the Chinese, the contract is the *beginning* of the negotiation” (SPAA Seminar, 16/11/2011). Such an understanding is diametrically opposed to the Australian context where actors are not accustomed to taking an agreement seriously unless it is written in ink. In accordance with Ostrom’s definition, rules require “most people whose strategies are affected by it know of its existence and expect others to monitor behaviour and to sanction non-conformance” (Ostrom 1990: 51). Not only does the insistence on the role of written contracts reflect a fundamental misunderstanding of how operational rules are devised, agreed and embedded in the Chinese commercial context, but the insistence on contracts is counter-productive to the formation of

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<sup>6</sup> Unattributed by request.

enduring, long-term relationships within the Chinese film industry (Ostrom 1990: 102).

Informal institutional arrangements based on networks of individuals, firms or other institutional actors perform the role of contracts in the Chinese business environment: to reduce uncertainty, and thus, transaction costs. These arrangements have formed in the absence of state intervention or the failure of market coordination mechanisms to provide third party enforcement (Krug & Hendrishke 2008: 98; Ostrom 2005: 95). As self-governing institutions with internal enforcement mechanisms, the networks operate on the basis of “mutual trust and affinity” (Krug & Hendrishke 2008: 98). In the absence of “strong external mechanisms for monitoring and sanctioning” norms of reciprocity and cooperation are developed across multiple interactions (Ostrom 2005: 42-43). A feature of this environment is the enhanced role of reputation as a compliance mechanism (Tao & Zhu 2001: 3; Ostrom 2005: 42-43). Reputation may extend from being known as trustworthy, to also having a reputation for enforcing compliance among those who do not honour their agreement (Ostrom 2005: 43). This view accords with Tilley’s findings that trust networks create “commitment-maintaining networks” that form the social basis for “most weighty, high-risk, long-term collective enterprises” (Tilley 2010: 272). The imposition of external enforcement of contracts in the context of existing arrangements may serve to “crowd out cooperative behaviour” (Ostrom 2005: 130).

From the network perspective, transaction rules are defined, monitored and sanctioned by a web of relations. Working *within* existing nested institutional arrangements offers the Australian film industry richer potential to build stronger

institutional linkages and leverage the power of network relationships. This entails not insisting on enforcement on contracts according to the western paradigm, but in thinking laterally about engagement. Networks within the Chinese film industry and the broader institutional environment operate across multiple institutional scales, creating vertical and horizontal linkages amidst the heterogeneity of commercial and political environments (Krug & Hendrishke 2008: 98). The strength of these linkages determine the network's capacity to mobilise resources and connections and resolve institutional weaknesses such as ill-defined property rights or contractual security (Krug & Hendriscske 2008: 92).

Krug & Hendriscske (2008) suggested that the business networks had “low entry and exit costs”, however the activation of the network depended on the contribution to “the exploitation of an asset” which could include knowledge, capital, skills or contacts (2008: 98). The strength of ties is directly related to this contribution. This requires Australian counterparts in co-production relationships to think laterally about their strengths in the partnership in order to secure stronger connections. The network perspective also requires the Australians to understand their counterparts relative to their web of relationships across the institutional hierarchy of the Chinese film industry and beyond. In his dealings with the Chinese film industry, the director of *The Dragon Pearl*, Andreacchio, reflected on the “fundamental mistake” he made by dealing as an individual “producer to producer” (SPAA Seminar 16/11/2011). For his next film, Andreacchio chose to negotiate with the Australian Government present at the negotiation table, which added a dimension that gave “credibility and weight to negotiate fully” (SPAA Seminar 16/11/2011).

The effectiveness of Andreacchio's decision to invite the Australian government to the negotiation table served a dual purpose. First, conducting the agreement within the context of political hierarchy provided an important signal to the Chinese counterpart of the esteem with which the agreement was held. Second, and more importantly, the terms of agreement were nested within the context of informal network institutions that cut across commercial and political spheres. By implication, Australian filmmakers seeking to engage with China must take care to position themselves within a network of relations that is recognizable to and (ideally) overlaps with their Chinese counterpart in order to activate an action arena of mutual recognition and trust. From this vantage point, operational rules should be carefully constructed in order to crowd in norms and cooperation and reciprocation to achieve outcomes that are "better than rational" (Ostrom 2005: 7). This strategy has been successfully adopted within the Canadian film industry, whose engagement with China has been largely driven by the Chinese diaspora. Sharing language and heritage, members of the diaspora could more easily activate conditions for trust and reciprocity (Tilley 2011; Interview with Brigette Monneau, Director of International Relations, Telefilm Canada 5/05/2012).

If the Australian film industry is to successfully engage at this level within the Chinese commercial context, these arrangements should prove more durable and binding than the contract approach for determining details of co-production agreements, including division of responsibility and revenue sharing, timeframes and key deliverables.. Engagement, however, requires the Australian film industry to adopt an entirely different model of engagement. Of central importance is to understand how the "network is made, maintained and functions to produce control"

(Smith 2003: 39). Harnessing the potential benefits of the network requires constant maintenance and communication so that the “commitment-maintaining connection” remains strong (Krug & Hendrishke 2008: 98; Tilley 2010: 271). From the co-production perspective this means rethinking the engagement with China from being a ‘market’ to being a complex of relationships that require patience and effort to nurture. As one interviewee observed: “The Australian film industry approaches the Chinese market as a bag of money where producers can go and get their films made. We will get nowhere if we continue to think that way”.<sup>7</sup> By generating genuine, frequent interactions with their Chinese counterparts, the Australian industry can substantially increase the trust essential to access to the networks and also begin to challenge their own preconceptions (Ostrom 2005: 53-54). As one interviewee suggested: “We want to know them, but they want to know about us too. They want to know who they are dealing with”.<sup>8</sup>

Finally, thinking about the informal networks and their connections within broader polycentric governance systems generates useful insights into the underlying logic of the networks and how they may assist or obstruct the goals of the Australian film industry. Emerging in domains where government or markets are absent, network institutions serve as sources of indigenous innovation, providing an arena where policy experimentation may occur (Krug & Hendrishke 2008: 83). The networks thus have a place in shaping the rules that correspond to different action arenas. Krug & Hendrishke (2008) suggest that the innovations developed within informal networks are creating a form of “endogenous institution building” that creates demand for increased effectiveness in those areas, thus influencing change across a range of

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<sup>7</sup> Unattributed by request

<sup>8</sup> Unattributed by request

rules and arrangements (Krug & Hendrichske 2008: 83). Working within the system, the Australian counterparts may have a greater chance to shape the policy and constitutional rules than by attempting to enforce an alien standard (Ostrom 1990: 51).

In addition to innovation, however, maintaining flexible approaches administered via networks may also serve the stability imperatives of the Chinese Government. In the context of contract law, for example, informal networks may be preferred to building a judicial system, which could grow to challenge the authority of the Chinese Central Government. Further, the complexity that networks navigate in the commercial and business environment creates information asymmetries that are to the advantage of the Chinese counterparts in the political or commercial relationship. This is particularly important when entering an agreement to share risks and rewards associated with a commercial relationship (Ostrom 2005: 51). In both cases, the ‘glacial’ changes to legal arrangements may be informed by the immutability of constitutional rules informed by stability, and the relatively stable policy rules of localization and indigenous innovation. In either case, the Australian film industry would be better served by adapting to the rules of the game rather than by wishing the rules were different.

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An examination of institutional arrangements that perform the purpose of reducing transaction costs and increasing certainty provides an alternative explanation for the failure of contracts in the Chinese commercial environment. Looking at the role of the contract from a polycentric perspective helps to unpack some of the assumptions that

inform the Australian film industry's understanding of its commercial relationship, the frustrations encountered and strategic alternatives that may be adopted. The institutional lens gives a different view to the simplistic dichotomy often deployed to explain the difference in commercial environments: the Chinese *are* deal driven, but the deal is driven through relationships. Likewise, Australians *are* relationship driven, but the contract is the written expression of that relationship.

## Conclusion

In the course of examining the institutional processes, the paper proposes that the barriers, difficulties and roadblocks experienced by Australian film industry participants in their dealings with the Chinese film market often reflect a strategy applied according to a fundamental misreading of the institutional ‘rules of the game’. This includes, but is not limited to, strategies informed by an anachronistic belief that China would become more like the rest of the world, rather than develop on its own terms (Fox & Godement 2009: 20); and the use of ‘cultural values’ that obscured the institutional rationale that had developed in a manner appropriate to the setting.

The examination of the hierarchy of rules provided an explanation for the tensions and contradictions observed within the Chinese film market. These rules were linked to the overarching soft power strategy of the Chinese Government for whom the film industry had a central role in both maintaining domestic stability and the promotion of its image abroad. This was linked to key tenets of the Beijing Consensus such as flexibility, innovation and gradualism which was reinscribed as both deliberate strategy and the natural result of polycentric governance arrangements and the particular characteristics of multiple, overlapping arrangements.

This was followed by an examination of the market protections employed by the Chinese Government and the identification of constitutional rules related to censorship as a proxy for stability. Differentiating between hierarchies of rules gives the Australian film industry capacity to distinguish between fundamental changes in the Chinese Government strategy, versus cosmetic changes that reflect shifts in

strategies related to particular rules in a given setting. Likewise, an examination of the institutions that govern transaction arrangements alerts us to the possibility of crowding out norms of reciprocity, cooperation and trust via the insistence on imposing contracts to define operational rules, monitoring and enforcement.

Finally, the paper proposes that mutually beneficial, enduring relationships within the Chinese film industry will derive from institutional engagement and strategies devised by *thinking in terms of polycentricity*. While this is not the only institutional lens that can be applied to understanding the Chinese film industry, the approach does have considerable value in terms of: revealing the multiple connections of rules and institutions across spatial and temporal dimensions; offering an analytical toolkit to identify the strength or weakness of nested arrangements; and a method to differentiate rules according to a hierarchy. These aspects of the theoretical framework help to identify the enduring nature of some rules (and institutions) over others. As Ostrom (2005) attests, the benefit of the IAD approach is its refusal of simplified explanations and a preference to think in terms of complex, multiple overlapping arrangements, comprising rules within rules. Building a strong strategy for engagement with the Chinese film industry should be based on identifying, ordering and analyzing the attributes and their interrelationships. In practice, this means reworking the entire commercial engagement and creative process along ‘polycentric’ lines in order to reflect true partnership across the different scale and spectrum of activity. As William Feng (2011) advised, “...we need to have people work on the script together, to understanding the culture, the people, the market...basic due diligence you need to do before you can have a successful co-

*production in China*” (William Feng, Chief Representative, China Office, Motion Picture Association, SPAA Seminar, 16/11/2011).

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### Interviews

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- 18/05/2012: John MacFarlane, Editor, Documentary Online, SBS Television
- 24/05/2012: Grant Dooley, Former Counsel General, Australian Embassy, Beijing
- 25/05/2012: Brigitte Monneau, Director of International Relations, Telefilm Canada
- 28/05/2012: Grant Dooley, Former Counsel General, Australian Embassy, Beijing (follow up).
- 30/05/2012: Chris Oliver, Senior Manager, State and Industry Partnerships, Screen Australia.
- 01/06/2012: Geoff Brown, Executive Director, Screen Producers Association of Australia
- 02/06/2012: Megan Elliot, Director, X Media Lab, Shanghai
- 02/06/2012: Geoff Brown, Executive Director, Screen Producers Association of Australia (follow up)
- 03/06/2012: Pauline Chan, Director of *33 Postcards* (2011), Co-Founder of the Australia-China Producers Alliance.

## Correspondence

- Andrew Ogilvie, Executive Director, Electric Pictures, Western Australia & Board Member of Screen Producers Association of Australia (Email correspondence 23/05/2012, 24/05/2012 & 25/05/2012).
- Susan MacKinnon, Executive Director, Documentary Australia Foundation (Email correspondence 24/04/2012 & 25/04/2012)
- Carmello Musca, Executive Director, CM Films, Director of *Deep Sleep No More* (2011) with Writer Jin Tzu Cheng Beijing Film Studios (China). (Email correspondence 03/08/2011)

## Seminars & Conferences

### **Screen Producers of Australia (SPAA) Conference (16 November 2011)**

Don't be a bull in a China [Movie Production] Shop

Panellists: Moderator Paul de Carvalho, Director of Production Attraction, SCREEN NSW.

Speakers:

- Mario Andreacchio, Executive Director, AMPCO Films, Director *The Dragon Pearl* (2011)
- Pauline Chan, Producer, *33 Postcards* (2011)
- William Feng, Chief Representative, China Office, Motion Picture Association (MPA), CHINA
- Mathew Alderson, Counsel, Harris Moure pllc, Beijing. CHINA.

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<http://conference.spaa.org.au/displaycommon.cfm?an=1&subarticlenbr=534> -

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### **Canada-Asian Co-Production Summit, AmérAsia Film Festival (2<sup>nd</sup> edition), Montreal 12 March 2011.**

Panel: Negotiating legalities and finances 2011

Panelists:

- Bob Moore (Producer at Eyesteel films)
- Marielle Poupelin (Deputy Director at Telefilm Canada)
- Alain Rondeau (Annalist and councilor at SODEC).

Video presentations:

- Chang, Kevin (2011): Secretary General of the Asian-Pacific producers' network at Association of Film Commissioners International.
- Chang, Yuan (2011): Director *Up the Yangtze* (200X) and *China Heavyweight* (2012).

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## APPENDICES

### Films

#### Australia-China Co-Productions

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***Children of the Silk Road/ The Children of Huang Shi (2008)\****

Director: Roger Spottiswoode.

Perf: Jonathan Rhys Meyers, Radha Mitchell and Yun-Fat Chow.

Synopsis: About young British journalist, George Hogg, who with the assistance of a courageous Australian nurse, saves a group of orphaned children during the Japanese occupation of China in 1937.

*\*Tri-partite co-production - Germany-China-Australia.*

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***Sleep Deep no More (2011)***

Director: Carmello Musca / Zin Zeching

Perf: Arman Darbo, Bojie Hao and Igor Darbo

Synopsis: 1940, Shanghai is under the occupation of the Japanese Army. When the axel powers demand that their Japanese counterparts place Jews in concentration camps, Ms Li and her friends help to hide Jewish people in the lanes and streets of Shanghai.

*NB. Produced as a local Chinese production with an Australian Director, not as treaty-based co-production.*

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***Dragon Pearl (2011)***

Director: Mario Andreacchio.

Perf. Sam Neill, Li Lin Jin, Louis Corbett.

Synopsis: Josh and Ling were expecting a boring vacation visiting each of their parents at an archaeological dig in China. But the new friends soon discover they're right in the middle of an adventure when they find a Chinese Golden Dragon.

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***33 Postcards (2011)***

Director Pauline Chan. Perf. Guy Pearce, Zhu Lin and Lincoln Lewis.

Synopsis: Dean Randall has sponsored a young Chinese orphan Mei Mei for many years, when she arrives in Sydney out of the blue to thank him, their lives are changed forever.

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## China-Canada Co-Productions

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### ***Diamond Dogs (2006)***

Director Shimon Dotan

Perf. Dolph Lundgren, Nan Yu and Xue Zuren

Synopsis: **A mercenary is hired to protect an expedition group while they search for a Tangka, a Buddhist artifact worth millions of dollars.**

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### ***Iron Road (2007)***

Director David Wu.

Perf. Betty Sun, Luke Macfarlane and Sam Neill.

Format. TV Mini-Series. 2 x 90 minute episodes.

Synopsis: A poor but feisty Chinese woman, disguised as a boy, joins the railroad crew in the Rocky Mountains to search for her long-lost father, and falls in love with the son of the railroad tycoon.

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### ***Forever Fireworks (2007)***

Producer Jalal Merhi & Bao Yu

Perf. Bao Beier, Chris Mark, Jennifer Dale

Synopsis: Friendship, love, passion and dealing with death but hoping for a forever firework life.

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### ***Wushu Warrior (2010)***

Director Alain Desrochers

Perf. Matt Frewer, Tod Fennell and Amber Goldfarb

Synopsis: Action adventure. The story takes place in China during the 19th century.

Lord Lindsay (Matt Frewer), a British merchant and also a drug trafficker, intends to bring opium in China by ship. However, because Rev. Elders (Matthew Bloomfield) is an outspoken critic of Lord Lindsay, he's killed. With the help of Rev. Elders' Chinese friends, his son, Jonathan, is taken to a safe village. Once there, Jonathan will be taught Wushu. After many years of training, Jonathan embarks on a journey to avenge the death of his father and to put an end to Lord Lindsay's drug business.

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### ***The Way of Tai Chi (2011)***

Director Giles Walker

Perf. Jiang Ling Bao

Synopsis: Documentary - The film is a story about a Canadian born Chinese girl comes back to China to learn the martial art of Tai Chi. The film combined incredible mastery of Tai Chi with traditional Wu Dang religious music, and showed the way how Taoists of Wu Dang mountain keep their health in a good condition.

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### ***China Heavyweight (2012)***

Director: Yung Chang

Perf. Zongli He, Yunfei Miao and Moxiang Qi

Synopsis: A documentary on rural teenagers in South-Western China who are recruited as their country's next Olympic hopefuls, with a focus on the coach Qi Moxiang.

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