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Changing China



OUR MAN ON CHINA

Daniel Laprès ('72)
has published some 20
articles on Chinese law

and business in journals and magazines in North America, Europe and Asia. The Sir James Dunn Law Library was very appreciative to receive a version of his book *Business Law in China* which is now part of the library collection. His latest article entitled "The Role of Foreign Lawyers in Arbitration Proceedings in the PRC" was published by the *International Business Law Review* in its June 2010 issue. In 2005, he became the first foreign lawyer to integrate a Chinese firm as Special Counsel, and he was also the first French lawyer to be cited in the China section of the *The Asia Pacific Legal 500*. In 2008, he was appointed to the list of foreign arbitrators of the China International Economic and Trade Arbitration Commission (CIETAC). Currently he is "Of counsel" to Kunlun Law Firm which has offices in Beijing, Shanghai, Guangzhou and Shenzhen. Laprès kindly consented to speak to Hearsay and share some of his experiences and impressions of China today.

Hearsay: Daniel, perhaps we might begin if you give us a brief re-cap on your early involvement with China.

Daniel Laprès: My immersion in the Chinese environment began in 1975 when I moved to Hong Kong to join the first foreign law firm to open an office in Asia. In the People's Republic of China (PRC), the Cultural Revolution was just winding down and the country remained mired in autarchy and poverty despite the considerable progress since the Revolution in 1949. The legal profession was practically nonexistent in the PRC and foreign lawyers would only be issued visas to travel to the mainland for business reasons.

H: You left Hong Kong in 1976 to move to Paris. Why did you learn Chinese and continue your business and professional activities in the China region?

DL: Rubbing up against China at that time might be analogized to the ant scurrying up the elephant's leg: it's big, but you're not sure how big or even what the total form is but you're drawn

to investigate further. Even then Hong Kong was a major metropolis and all East Asia was booming. During the 1980s, I maintained a trading company in Hong Kong and sourced and wholesaled goods in Hong Kong.

In 1989, I became involved in assisting refugees from the Tiananmen Square movement establish themselves in France. Several of the leaders lived in my apartment for awhile and we had some interesting discussions. One point, which might surprise a lot of Western observers, was made systematically by those young people, and is still maintained by those with whom I am still in contact; they support the PRC Government rejection of Tibetan secession. Altogether, it was a very exciting time!

In 1995, after admission to the Paris Bar, I renewed my interest in Chinese law and two years later the International Chamber of Commerce published *Business Law in China*, a book which I co-edited and co-authored with Zhang Yuejiao, currently a member of the Appeal Board of the World Trade Organization (WTO). (A second, electronic edition was published in 2008.)

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H: Is it fair to say that your China connection also goes beyond the mere professional?

DL: Well, yes, it's also a family affair. In 1990 I married Shen Suhua, a native of Beijing, in Paris. That's where we have lived and raised our two daughters. The eldest, Mae, is 18 years old; she served as a volunteer during the Olympics in Beijing in 2008, and worked as a translator (French, English and Mandarin) for the media. This July she modeled for the inaugural issue of *Harpers' Bazaar* in China. Our second daughter, Lena, is 15 years old. She also speaks the three languages and is in high school in Paris. This past summer she appeared as a dancer in a movie made for Chinese television.

H: On your website you have inter alia references about your pro bono work for Chinese Christians seeking asylum in France. Many in the West regard China's record on human rights to be dismal, particularly with regard to freedom of religion and expression. Would you share that view?

DL: There is a lot of misunderstanding on the matter of thought control in China. In private one hears lots of criticism of the government. The idea that the PRC internet is protected by firewalls is belied by the actual possibility for any high school student to figure out a way around it. Some issues of great social consequence are regularly debated openly and on TV: environmental protection, protection against food and hygiene risks, transportation systems and catastrophes, to name a few. One indication of how China is evolving is that the local Chinese Catholic church in Paris nowadays encounters far fewer sincere underground Catholics who have suffered persecution on the mainland. So there does seem to be greater tolerance by the authorities of religious expression.



Daniel Laprès with associates of the Chinese law firm to which he is "Special Counsel." To Laprès' right is Lei Kai, a senior partner and a contributing editor to his book *Chinese Business Law*.

H: That sounds almost too good to be true.

DL: I am an inveterate optimist—but China's recent history has shown that optimism is the right side of the trend.

H: Can you give us any examples from this recent history?

DL: The situation, as I see it, is constantly evolving and I think in the right direction overall, so there is good reason to be optimistic about the prospects for increased freedom of speech and of expression in the PRC. There are gay communities in Shanghai and Beijing and other major cities. There are faithful of all religions, and members of minority political parties, who have reached the highest posts in the PRC's administration, including in its legal branches: the Judiciary and the Procuratorate—which is loosely the national agency for criminal investigation and prosecution. Believers in Buddhism can be encountered in every walk of life, including within the Communist Party, and the Christian religions are thriving in the rural communities. It's worth remembering that in the Maoist tradition, religion is only a "minor contradiction" and in the Constitution religion is neither encouraged nor prohibited. The rush up the scale of values to reach moral discussion has been accomplished for large numbers of well-off Chinese who conclude that there is more to life than material gain.

H: Are you therefore predicting a liberal democratic future?

DL: Yes, globalization will continue to challenge both traditional Chinese values and the values of the Communist Party. The current dispersion of economic power, even if at the moment it mainly exists within an oligarchy constituted of the family and friends of the rulers, will only fuel and sustain ambitions for the exercise of political influence. Western style democracy is not much more distant than the first secession of any of the currents agitating the Communist Party.

H: Could you elaborate a bit more on that last point?

DL: If you mean my reference to a liberal democracy being no further away than the first secession of a splinter group within the Communist Party, I am going beyond a mere prediction of the instauration one day of a liberal democracy by imagining how it will come about. Perhaps it will be another mass movement of the youth as during the Tiananmen Square demonstration, a workers' revolt as in Poland, or a dislocation of the Republic as in the Soviet Union. My own thought—reflecting those of at least some of my Chinese friends—is that the currents in the Communist Party will become more assertive, supported by contending factions within the widening economic oligarchy. Eventually one or more factions will officially secede from the Party. The PRC already has an elective system. What's missing is a strong opposition party. My prediction is that such a strong opposition will arise gradually within the Party, and later without, at which point there would be a decent model of liberal democracy.

H: You paint a pretty rosy picture.

DL: Maybe, but at the same time I don't deny that in China today the golden rules are to avoid threats to the unity of the Chinese State, and those to the dominance of the Communist Party.

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From my viewpoint, that is already too restrictive an environment. Also, as a lawyer I must decry the exercise of licensing powers to silence professionals who defend in the normal course of their practice controversial cases, such as those involving the defense of Christians before the Chinese courts.

But, I also find it bothersome when some people argue that China is endemically corrupt—when Westerners excuse their own predilection for corruption with the glib: “Everybody does it so we must keep up—when in Rome, etc. etc.” The much-commented case involving Rio Tinto and an Australian (ethnic Chinese) executive ought to serve notice that the Chinese authorities will fight corruption wherever they can find it—not every time, because no one could pretend the system to be perfect—but increasingly often.

H: What are the greatest risks facing today's China?

DL: In economic terms, the greatest risks are posed by the national banking system's exposure to the overbuilt real estate sector, which is vulnerable to interest rate increases. In political terms, the danger arises mostly from the Western frontier and the Muslim part of China as a part of the general movement of radical Islam.

H: To follow up on that last point, Daniel, are you saying that crackdowns we read about on Chinese Muslims are occurring out of a fear that they may have links with Al Qaeda, the Taliban and other groups connected to organized jihadist activities?

DL: The first observation I would make is that there needs to be a distinction drawn between Chinese Muslims and ethnic minority Muslims (such as the hui, wei - Uyghur - and the kazak minorities). Xinjiang in the northwestern region is China's largest province-level territory and corresponds to one-sixth of the country's total territory; but only some 20 million people live there (about 1.6 per cent of China's total population).



Evidence of progress cascading to even the poorest regions is seen in solar-powered yurts in Western China.

Xinjiang has the country's longest border which it shares with Mongolia, Russia, Kazakhstan, Kirghiziata, Tajikistan, Afghanistan, Pakistan and India. The vast majority of China's 20 million Muslims live in Xinjiang. The danger for dislocation of the PRC would, in my opinion, come even more from Xinjiang than from Tibet. In Xinjiang, the Chinese, including the Chinese Muslims, seem to enjoy better living conditions and have better prospects than the minority peoples. Based on my own personal observations, any resentment that people generally in Xinjiang might have manifested toward any neglect or disdain from the central authorities is greatly exacerbated among the ethnic minorities, almost all Muslims—often nomadic—and clearly disadvantaged socially.

H: You thus see any real danger to the PRC as coming from these ethnic minority groups?

DL: Yes, while hastening to add that I do believe the worst will be avoided because the Chinese economy is being managed in such a way as to draw even the poorest up—even if this results from a cascading down of what progress is afforded generally—better communications, education, housing and other social services. I see a tendency of the youth in the minority peoples to integrate the sedentary way of life, to become educated and to adopt the global styles of living.

H: This might lead us to ask about your own trip to Xinjiang this past August. Did you form any impressions that would have a bearing on this discussion?

DL: Well, the trip certainly brought home that globalization has penetrated throughout the territory even into its frontier hinterlands, including Xinjiang, where one can readily encounter a family of Mongolian nomads dancing to recordings of Straussian waltzes, or be invited to dine with them in their “yurt” under a glowing reprint of the Mona Lisa. In the capital city of Urumqi the principal Mosque juxtaposes a building of identical architectural inspiration, the ground floor of which is occupied by outlets of Kentucky Fried Chicken and a McDonald's, and on the roof of which flies the flag of the PRC. In Xinjiang, one point I tried to verify was the local policy toward the wearing of veils and of bourkas (full body veils leaving only the eyes apparent) by local women. The issue evokes different treatments from one country to another, and a law in France that is to prohibit the wearing of bourkas in public places has drawn the ire of Muslims in numerous countries. But in Xinjiang, it seems that young Muslim girls can attend public school wearing veils, though one would not wear a veil while exercising a public function, such as teaching in school or working in a hospital. So the policy in Xinjiang is actually more liberal than that applied in France.

H: Based on your observations and experience over the last 35 years, what do you see as the long-term outlook for China?

DL: Rising general wealth, further integration into the global economy, unrelenting urbanization, at least partial solutions to the environmental challenges, gradual implementation of Western-style democracy, increased personal freedom, and peaceful international relations making possible an amicable solution to the Taiwan issue. •

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