



**REFLECTIONS ON CHINA:
PLYMOUTH AND SHANGHAI
MARITIME UNIVERSITIES
EXCHANGE PROGRAMME**

Stefano Congiu

A Different World? – and Some Advice for Other Prospective Student Visitors

In the very early hours of Friday 15 June I had just about finished packing my bags which contained all that I thought I would need to survive and enjoy China with maybe 30 minutes to spare. As a second year law student I was part of an Exchange Programme with a group of around 60 Plymouth University and Partner Colleges' students who would become international students in Shanghai for one month courtesy of Shanghai Maritime University.

The trip itself was a joint enterprise between Plymouth University and Shanghai Maritime University which operates with the idea of expanding cultural awareness for both Universities' students. Whilst we were in China, the groundwork was being prepared at Plymouth for students at Shanghai to visit and live in Plymouth in much the same way upon our return.

After packing my belongings I had to re-evaluate what I was going to take - Part Four of the China Customs baggage declaration form (essentially stating what you can and cannot bring into the country) rules out any 'Manuscripts, printed matter, film, photographs, vinyl records, cinematographic films, loaded recording tapes and videotapes, CD's, etc., which are detrimental to China's politics, economy, culture,

ethics and national security.¹ This vague blanket ban of anything 'detrimental' to politics forced me to re-consider my reading list, but helped draw me to the realisation that what is formally stated is not necessarily practically enforced within China. It was also a clear reminder of the sometimes sensitive political situation China promotes and its responses which are so different from our own. However, on a pragmatic side of things the people who screened/submitted our visas were very helpful and good at getting our applications sorted and returned back to us which meant that there wasn't too much last minute panicking.

Upon arriving in Shanghai we were thrown into a completely different world, which is the only way to really adequately describe it. Shanghai is a huge city, it has a population of just over 23 million people which is more than the entire population of Australia, and is the most populous city in China.² Luckily, we had the helping hand of Shanghai Maritime University to guide us through this sprawling mass, and they certainly did well here.

Shanghai Maritime University organised a full, comprehensive timetable for us which tended to run from 9am to 5pm. They really spared no expense in order to give us the best possible time and expose us to as many areas of Chinese culture that they could. We saw kung-fu demonstrations, visited a world class circus, went to a plethora of museums and beauty spots, visited Nanjing for two days alongside whatever we chose to do in our free time and various guided tours. Aside from this, the schedule roughly consisted of a two and a half hour Chinese Mandarin language lesson every morning and a lecture by a professor on his/her subject of choice in the afternoon with subjects varying from law in China and its legal system, to Chinese history and Chinese Art. This spectrum of subjects gave us insight into many aspects of China, particularly as some of the subjects were not ones which I would have necessarily chosen at the outset – but having learnt from them I think that they give a fuller knowledge of China.

On something of a side note, you are forced to learn how to haggle in China which could be good for any law students who feels like getting back into some negotiations

¹Air China website, 'Customs', http://www.airchina.com/gr/en/travel_information/travel_preparation/customs/customs.shtml (Accessed on 24 September 2012).

²By Liu Dong, Global Times Website, 'Shanghai population surges to 23.47 million', 05 May 2012 at 00:15, <http://www.globaltimes.cn/NEWS/tabid/99/ID/707874/Shanghai-population-surges-to-2347-million.aspx> (Accessed on 24th September 2012).

practice or any second years who have it as part of their 'Lawyer's skills' module. As an example, I wanted to buy an embroidered picture as a gift and was told it was 95 Renminbi (Renminbi can also be called 'Yuan', 95 Renminbi equates to around £10 sterling), I haggled for about ten minutes and bought it at 45 Renminbi. This was my first haggling experience and I was pretty elated thinking I'd got one over on the seller, until some helpful passers-by told me that it was worth around 25 Renminbi. On the plus side, it was actually really enjoyable. The exchange rate is about ten Renminbi to £1 sterling which makes you feel like aristocracy when you get off the aeroplane as the spending power of your money has just multiplied by ten.

Before I delve into an overview of the Chinese legal system it is also important to note some of the aspects of the culture and what it was like living there for a month. Being a foreigner in China is absolutely amazing in that you are a novelty for a lot of people that you see. Even in Shanghai which has a large ex-pat population and plenty of non-Chinese national workers situated there be prepared to be pointed at, stared at and have your photo taken. I found this quite amusing, you could be walking along the Bund (a part of Shanghai with an incredibly photogenic skyline which owes much to European colonial influences) and be stopped more than once by groups of people who want their picture taken with you (if you are interested at all in the Bund then don't hesitate to Google it). Being aware of the large population of foreigners in Shanghai I queried one of the helpers who told me that a lot of the Chinese people in Shanghai are not necessarily from Shanghai themselves but from the surrounding area and was told that for many of them it could be the first time that they've seen a 'laowei' (foreigner) in the flesh.



Being brutally honest, Chinese food is a 'hit and miss' area. Some of the food that you will eat is spectacular and nothing like anything that you will find in the UK (I'd especially recommend the big dumplings -or bao zi). However, in China there exists the idea that removing bones from meat prior to cooking removes some of the flavour and so bones will invariably end up in your food. Obviously this isn't a problem for Chinese people, but grabbing what looked like a nice piece of fried meat and then crunching on some fried bone messed somewhat with my Western sensibilities. There's a certain mind-set that is beneficial to foreigners coming to China with regards to food – 'try anything'. If you are an adventurous sort and have no problem experimenting and trying new things out then you will love the food and have a brilliant time. If, however, you are inseparable from Monster Munch and cheesy chips then you may well starve to death.

Some Notes on Chinese Law

It is here that I intend to explore some interesting aspects of Chinese law. I had intended to write this as a comparative piece between our tort law and Chinese tort law, but instead thought I would concentrate on what I think could spark an interest in any law student who might be reading this. I therefore settled on a few overview points of what (in my opinion) makes Chinese law interesting.

Chinese law is incredibly interesting from the standpoint of a law student as it has been through a startling rebirth and has re-established itself within the last 40 years or so. After Chairman Mao ascended to become the leader of China, the Cultural Revolution and activism of the Red Guard obliterated the previous legal system. In the words of Zhou Hairong writing in 1991, 'Chinese legal institutions collapsed as a result of *Zalan Gongjianfa* (a highly popular slogan of the Cultural Revolution which means the smashing of the police, the procuratorship and the courts)'.³ To fully illustrate the effect that this has had on China's legal infrastructure and why China's legal system is unique, comparisons can be drawn with other countries (especially communist Russia). Szawloski stated that in Soviet Russia 'the bulk of the pre-Second World War legislation was preserved for many years, and replaced only gradually' which is in stark comparison to China: 'After the victory of the revolution in 1949 the whole of the old legislation, including the progressive civil law, was simply swept away'.⁴ These differences showcase why exactly China's legal system is not

³Zhou Hairong, 'The re-establishment of the Chinese legal system: Achievements and disappointments', (1991) 10, *Civil Justice Quarterly*, p.44.

⁴Richard Szawloski, 'Reflections on the laws of the People's Republic of China 1979-1986'

only unique but fascinating, as it can still be regarded to be in its infancy.

Another reason why law in China is so fascinating is that its tradition and culture are still somewhat enmeshed in the day-to-day legal experience of Chinese people. The prevalence of Confucianism in China and emphasis on 'social harmony' obviously sets a different legal stage to that present in the UK, indeed even the 'Law of Civil Procedure of the People's Republic of China' stresses that one of its guiding aims is to 'maintain the social order and economic order'.⁵ I found the different attitudes and opinions with regards to litigation and the legal process eye-opening, and this is further compounded by the 'culturally instilled notion that resort to the courts was a sign of failure of, perhaps, social morality, and certainly of management of interpersonal relationships'.⁶ I would stress that appreciating and attempting to understand a foreign approach to a legal system is not only interesting but rewarding. Remember that these social norms and the legal system are the reality for one fifth of the world's population.

If I was to talk to someone about Chinese law, I am fairly certain I can make the assumption that 'human rights' would come up quickly. This goes hand in hand with perceived injustices in China. I was actually told by one Chinese law student after a game of basketball that 'There is no law in China'. I think this stems from corruption and a lack of the rule of law with regards to Communist Party officials and their families. This fact that the rule of law is undermined by Chinese Officials is fairly well known; the recent murder of the British businessman Mr Heywood led to the prosecution and incarceration of Gu Kailai with a suspended death sentence. However, this has received criticism in China and left many people perplexed at how she avoided a death sentence when she committed a pre-meditated murder and attempted to hide the evidence. In comparison some economic crimes carry the death sentence (even though this number was reduced by the Chinese government in 2011) with it currently standing that 'Capital punishment will still be available for some economic crimes such as large-scale corruption'.⁷ One of the comments on this which I found that highlighted perceived injustices was from Yao Bo. 'Yao Bo, a

(1989) 38(1), *International and Comparative Law Quarterly*, p.199.

⁵Article 2 of the Law of Civil Procedure of the People's Republic of China, 1991.

⁶ M.A. Allee, "Code, Culture, and Custom: Foundations of Civil Case Verdicts in a Nineteenth-Century County Court" in K. Bernhardt and P.C.C. Huang (eds), *Civil Law in Qing and Republican China* (Stanford University Press, 1994), p.128.

⁷Chris Hogg, BBC News Asia-Pacific, 'China Ends death penalty for 13 economic crimes', 25 February 2011, <http://www.bbc.co.uk/news/world-asia-pacific-12580504>, accessed on 24 September 2012.

popular newspaper columnist and social commentator, said, "How wonderful life is, how handy the law can be, as long as you have the party to protect you".⁸

What is perhaps even more galling is that Gu Kailai's husband was implicated in corruption and so-called 'economic crimes' but managed to avoid facing the courtroom until very recently as he has two powerful factors on his side which *The Independent* showcased - he 'still has support from powerful factions within the party. There are also fears he could implicate other party leaders'.⁹ However, exceptionally, recently he has been expelled from the Communist Party and faces the prospect of the courtroom for 'corruption, abuse of power, bribe-taking and improper relations with women'.¹⁰ Whilst this is certainly a step in the right direction it does showcase the uneasy relationship that politics and the law possess in China - as he was safe until he lost the protection of the Communist Party.

Whilst corruption and a lack of adherence to the rule of law is certainly a problem, Chinese human rights in general are perhaps more infamous. Human rights are something of an elephant in the room and can certainly pique the interest of us law students as it is a bit more glamorous than land law. It is certainly something that we have an awareness of in the West and I would advise anyone who is interested in this to Google/research the 'Weiquan movement'.¹¹ This is a fairly famous group (a very small group as they often work pro-bono and face extreme discrimination from the State) of lawyers/legal experts in China who defend human rights abuses often in the face of possible disbarment or imprisonment, it doesn't take much digging to find some interesting stories and Weiquan lawyers.

To fully appreciate what makes the Weiquan movement interesting, it is necessary to note that the separation of powers does not fully exist in China and the Communist Party can exert a lot of influence on lawyers. A brilliant example of this is the Law on Lawyers of the People's Republic of China, particularly Articles 3 and 22. Article 3

⁸World News, 'Sentencing draws strong reaction', Published August 21 2012, http://www.upi.com/Top_News/World-News/2012/08/21/Sentencing-draws-strong-reaction/UPI-81631345549832/ , accessed on 24 September 2012.

⁹Clifford Coonan, 'China's trial of the century: Getting away with murder?', 8 August 2012, <http://www.independent.co.uk/news/world/asia/chinas-trial-of-a-century-getting-away-with-murder-8015806.html> , accessed on 24 September 2012.

¹⁰BBC News, 'China's Bo Xilai expelled and faces criminal charges', 28 September 2012, <http://www.bbc.co.uk/news/world-asia-19755035> , accessed on 6 October 2012.

¹¹http://www.google.co.uk/#q=weiquan+movement&hl=en&safe=off&prmd=imvns&ei=DctgULW1HZGIhQeO8YCoBA&start=0&sa=N&bav=on.2,or.r_gc.r_pw.r_qf.&fp=bd66c17f7055854b&biw=1366&bih=643

states that 'Practice by lawyers shall be subject to supervision of the State'¹² and Article 22 requires law firms to 'arrange for lawyers to carry out business, study laws and State policies'.¹³ It is exceptionally obvious that the role of a lawyer in China is not only heavily politicised but subject to pressure from the State. Indeed, the Vice-Minister of Justice stated during his closing speech for the All-China National Lawyer's Association that

The key point in the work of lawyers is their role in contributing to the stability of a harmonious society, and that lawyers must support the leadership of the Party at all times.¹⁴

What makes the Weiquan movement's lawyers abnormal is that they are prepared to resist the influence of the Communist party (such as working on politically sensitive cases) and unfortunately, face the wrath of the intertwined State/Judicial mechanisms and the party members behind them. This often has dire consequences, including disbarment, beatings, imprisonment and even torture. What makes their courage even more admirable is that in some cases this retribution is not just limited to the lawyers themselves but can be meted out against their families as well. The Human Rights in China website cites the experience of one lawyer –

Guo Feixiong, who helped Taishi Village residents attempting to protect their rights and dismiss corrupt officials, was arrested for "illegal business activity," and has been detained since September 2007. He has suffered torture in prison, which he protested by going on hunger strike for 40 days'.¹⁵

Finally, during my research I found something which surprised me and I was certainly unaware of before. China has a very good system of legal aid and it has been described as 'unusually comprehensive' by Francis Regan and in comparison with many other countries it does look good.¹⁶ To put China's success on this front into perspective,

A number of developing societies in different parts of the world, including Uganda, Thailand and Fiji have struggled with limited success to establish legal aid schemes over the last ten years. Meanwhile, other wealthier societies, including Japan and Singapore, have not attempted to develop anything like China's comprehensive policy or implement a

¹²Article 3, Law on Lawyers of the Peoples Republic of China 1996.

¹³Article 22, Law on Lawyers of the Peoples Republic of China 1996.

¹⁴Human Rights Watch website, "Walking on Thin Ice", Published April 29 2008, http://www.hrw.org/node/62248/section/3#_ftn7 , accessed on 25 September 2012.

¹⁵Human Rights in China, 'Protect Human Rights Lawyers, establish a true legal system', published October 2007, http://hrchina.org/sites/default/files/oldsite/PDFs/CRF.1.2008/CRF-2008-1_Lawyers.pdf, accessed on 25 September 2012.

¹⁶Francis Regan, 'Legal Aid in China: An analysis on the development of Policy', (2004) 23, *Civil Justice Quarterly*, p.169.

similar scheme.¹⁷

China's legal aid system is fulfilled not only by the Government but also by NGO's (Non-Governmental Organisations), with private lawyers having to do pro-bono work (due to the 'Law on Lawyers and Legal representation' and 'China's Criminal Procedure Law') or paying a sum to legal aid offices which would allow them to take their case on their behalf. This would seem to be an overlooked boon for human rights in China, access to justice is of course, a human right and China appears to do well with regards to providing it.

Contrasting China's legal aid scheme with ours is certainly interesting. Currently in England and Wales it is necessary for the defendant to pass a 'means test' and for the case to meet an Interests of Justice Test (this involves the so-called Widgery criteria which include circumstances such as it being likely loss of liberty, livelihood or that a substantial question of law may be involved). In general in China, to qualify for legal aid a person must have 'reasonable' grounds to ask for it and be subject to a means-test on their income (similar to ours). However, on a perhaps more interesting note the wealth disparity between urban and rural areas is noted (for obvious practical reasons) - 'In some poor rural areas, for example, the means test is as low as 70 Yuan per month, while in large cities where the cost of living is higher, the means test can be as high as 500 Yuan per month'.¹⁸ This is certainly not unusual, however China does seem to provide a comparatively high level of legal aid for the vulnerable by giving them priority over other sections of society. A good example of this in action would be the fact that blind, deaf and mute people automatically receive legal aid if they are defending a criminal case (but have to qualify in the same way as non-disabled people for help in a civil case). This has been described as 'especially significant'.¹⁹

Why Engage in the Programme?

Leaving the intricacies of the legal system behind - as far as I am aware, this cultural exchange between Shanghai Maritime University and Plymouth University will be carried on with next year. I would highly recommend it to anyone who can secure a place on the trip. Living in China is an eye-opening experience and benefits everyone, and not exclusively law students.

¹⁷Ibid, p.186.

¹⁸Ibid p.180.

¹⁹Tang Lay Lee & Francis Regan, 'Legal Aid for the disabled in transitional China', (2010) 14, *The International Journal of Human Rights*, p.327.

As a law student I think some of the benefits are plain for anyone to appreciate but there are others which are not so obvious. One of the more pronounced ones is that many big city law firms have offices in China, with Shanghai being one of the more likely places that an office will be situated (other than Beijing and Hong Kong). Some of the firms who have offices in Shanghai include Linklaters, Norton Rose and Clifford Chance, and these firms are looking for what they term 'global thinking' from any prospective candidates. I think that showing a willingness to throw yourself into other cultures, learn about them and then be able to try to think from their viewpoint would be an integral part of this requirement.

If your ambition is not one of becoming a solicitor then have no fear. The experience of living abroad in a culture which is so different gives benefits that are applicable across a wide spectrum of jobs. This 'global thinking' idea that some of the solicitor's firms are after is one that will benefit you regardless of what job ambition you have.

To end I think that it is important to stress that not knowing Chinese Mandarin is no barrier as this is something which has come up as being a big disincentive to a lot of people I've talked to. A vast majority of students on the trip had no previous knowledge of Mandarin other than a compulsory course provided to anyone accepted onto the trip. A lot of the Chinese students speak very good English, and if you're still worried then you can take advantage of the brilliant twilight language course in Chinese Mandarin offered at Plymouth University.

