

STARBUCKS IN THE FORBIDDEN CITY: REFLECTIONS ON THE CHALLENGES AND OPPORTUNITIES FOR A U.S.–CHINESE PARTNERSHIP ON ENVIRONMENTAL LAW & POLICY

*N. Bruce Duthu**

INTRODUCTION

The Forbidden City in the heart of Beijing served as the imperial palace for a succession of Chinese emperors who ruled during the Ming (1368–1644) and Qing Dynasties (1644–1911).¹ The collapse of the dynastic period in 1911 gave way to the founding of the People’s Republic of China (PRC) and its first president, the revolutionary leader Sun Yat-sen.² Today, the Forbidden City’s vast complex of ornate temples, immense walls, plazas, and gardens is known as the Palace Museum and is among the most popular tourist destinations in all of China.³ In December 2006, I was privileged to walk among these sites, mindful of the rich and complex history that had unfolded both within and outside the walled city.

Contrasts and contradictions abounded in this space but none were more disquieting than the sight of a Starbucks outlet right in the heart of the Forbidden City. In a flash, I registered a series of mental notes of what was wrong with this picture: a sign of globalization gone awry; a surrender to the western tendency to commercialize and commodify historic, even sacred, spaces and places; an unfortunate embrace of western tastes and lifestyles, and the profligate demands on the world’s environmental and energy resources that are often associated with such choices. At the same

* Professor of Law, Vermont Law School and Program Director, Vermont Law School—Sun Yat-sen University Partnership for Environmental Law in China. B.A., Dartmouth College, 1980; J.D., Loyola University School of Law, New Orleans, Louisiana, 1983.

1. Chinese Dynasties, <http://library.thinkquest.org/12255/library/dynasty/dynasty.htm> (last visited Mar. 29, 2007).

2. Modern China, Sun Yat-sen, <http://www.wsu.edu:8080/~dee/MODCHINA/SUN.HTM> (last visited Mar. 29, 2007).

3. The Palace Museum, A Brief History of the Palace Museum, <http://www.dpm.org.cn/English/default.asp> (last visited Mar. 29, 2007).

time, I recognized that the troublesome Starbucks represented a chosen, not an imposed, cultural element in the landscape that is modern China. At a deeper level, my principal concern with seeing the Starbucks outlet in the Forbidden City is reflected in a statement by Zhang Jianyu, program manager of Beijing's Office of Environmental Defense: "The fundamental problem is that China is following the path of the United States, and probably the world cannot afford a second United States."⁴ The concern here is not with Starbucks per se, but rather the culture of consumerism and the ideology of ecological imperialism that often underlies such far-flung corporate expansions.

These concerns, and the central concern of this essay, call attention to the paramount importance of sustainable growth in both the United States and in China. Despite vast differences in history, culture, government, and religious traditions, exacerbated by centuries of mutual misunderstanding and inattention to the other, the United States and China are traveling surprisingly parallel tracks when it comes to exploiting the world's storehouse of natural resources to fuel their respective economies. Vaclav Smil, a respected authority on China's environmental and energy policies, notes that:

[i]n this respect alone China and the United States are more alike than we might be inclined to recognize; however, they are also the global leaders in the production of greenhouse gases and in energy consumption, as well as in resistance to international efforts to reduce pollution. Considering this uncanny commonness of our status as environmental pariahs, a better understanding of the ecological adversity bred by the Chinese can prove illustrative for us.⁵

In this sense, the juxtaposition of Starbucks in the Forbidden City serves as a potent reminder of the limits of growth and the obligation of nations like China and the United States to recognize the lasting impact their economic, social, and political choices will have on the planet and the world's populations.

This essay describes the efforts of two institutions, Vermont Law School and Sun Yat-sen University in Guangzhou, China, to call attention

4. Timothy B. Weston, *Fueling China's Capitalist Transformation*, in CHINA'S TRANSFORMATIONS: THE STORIES BEYOND THE HEADLINES 68, 77 (Lionel M. Jensen & Timothy B. Weston eds., 2007).

5. Vaclav Smil, *Development and Destruction: The Dimensions of China's Environmental Challenge*, in CHINA BEYOND THE HEADLINES 195, 195 (Timothy B. Weston & Lionel M. Jensen eds., 2000).

to those particular ecological concerns and their plans to help redirect the course and nature of development, particularly in China, in accord with principles of sustainable growth. It should be noted at the outset that these institutional plans are designed to complement the numerous and varied home-grown efforts within China that are already in place or are being developed to respond to the urgent ecological constraints that impact China's future growth and prosperity.

I. THE CHINESE ECONOMIC "MIRACLE" AND ITS COSTS

It is undeniable that China's remarkable rise as an economic superpower—the nation's economy is second only to the United States⁶—has translated into improved living conditions for millions of Chinese citizens, though the benefits of that economic growth have been distributed rather unevenly between coastal and inland cities and between rural and urban populations.⁷ Western media sources regularly report astounding growth rates in the Chinese economy—on average, over 10% for each year since 2003—although these rates may not accurately account for the estimated \$650 billion in nonperforming loans held by Chinese banks.⁸

A more pressing issue for China today is determining how it will confront the serious challenges posed by the negative social, economic, and environmental costs that have accompanied this unprecedented growth and development. As noted above, China is among the world leaders in pollution emissions.⁹ A staggering "sixteen of the world's twenty most polluted cities" are located in China.¹⁰ China's principal environmental ministry, the State Environmental Protection Administration (SEPA) acknowledges that "living in China's most-polluted cities is a pulmonary disaster equivalent to smoking two packs of cigarettes a day."¹¹

Much of the air pollution stems from the proliferation of coal-fired

6. Timothy B. Weston, *China's Labor Woes: Will the Workers Crash the Party?*, in CHINA BEYOND THE HEADLINES 245, 245 (Timothy B. Weston & Lionel M. Jensen eds., 2000).

7. JOHN BRYAN STARR, UNDERSTANDING CHINA: A GUIDE TO CHINA'S ECONOMY, HISTORY, AND POLITICAL CULTURE 3 (2001).

8. Lionel M. Jensen & Timothy B. Weston, *Introduction: The New China, a Different United States*, in CHINA'S TRANSFORMATIONS: THE STORIES BEYOND THE HEADLINES 1, 12 (Lionel M. Jensen & Timothy B. Weston eds., 2007).

9. Smil, *supra* note 5, at 195.

10. Judith Shapiro, *The Political Roots of China's Environmental Degradation*, in CHINA'S TRANSFORMATIONS: THE STORIES BEYOND THE HEADLINES 50, 59 (Lionel M. Jensen & Timothy B. Weston eds., 2007).

11. See Jensen & Weston, *supra* note 8, at 15.

power plants throughout China.¹² Reliance on this energy source has profound negative social and health impacts on the Chinese population generally. For example, coal mining and production is a largely unregulated industry that costs the lives of thousands of Chinese miners every year.¹³ Viewed globally, eight in ten coal-mining related deaths take place in China.¹⁴

China's citizens are not oblivious to these ecological and personal dangers and they have demonstrated publicly, and at times even violently, to protest the government's dereliction of duty or blatant disregard of these serious environmental problems. In 2005 alone, the Chinese Ministry of Public Security catalogued over 87,000 incidents of civil unrest or protests, about 51,000 of which related to environmental complaints.¹⁵ It is important to note that the 1982 Chinese Constitution expressly protects China's citizens when they engage in these protest activities. Article 41 provides the following protections for citizens who challenge certain government actions:

Citizens of the People's Republic of China have the right to criticize and make suggestions regarding any state organ or functionary. Citizens have the right to make to relevant state organs complaints or charges against, or exposures of, any state organ or functionary for violation of the law or dereliction of duty; but fabrication or distortion of facts for purposes of libel or false incrimination is prohibited.

The state organ concerned must deal with complaints, charges or exposures made by citizens in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposures or retaliate against the citizens making them.

Citizens who have suffered losses as a result of infringement of their civic rights by any state organ or functionary have the right to compensation in accordance with the law.¹⁶

12. See Weston, *supra* note 4, at 77.

13. *Id.* at 76.

14. *Id.* at 77.

15. Alex Wang, China's Environmental Crisis & the Rule of Law: The Emerging Role of Legal Advocacy and Public Participation, Presentation Before the Council of Foreign Relations, New York City (Oct. 20, 2006); Jensen & Weston, *supra* note 8, at 22.

16. XIAN FA art. 41 (1982) (P.R.C.).

The 1982 Constitution also obligates the state to serve as a proper steward of the nation's natural resources and environment. Article 26 provides that "[t]he state protects and improves the environment in which people live and the ecological environment. It prevents and controls pollution and other public hazards. The state organizes and encourages afforestation and the protection of forests."¹⁷

While many of these public protests led to positive responses by government and business leaders, the government commonly responds with repressive and violent means. One of the most notorious recent clashes occurred in December 2005 in the village of Dongzhou in Guangdong Province, where villagers rose up to challenge the siting of a power plant on lands they claimed were illegally taken from them. Official reports acknowledged that government forces killed three villagers while recent commentary suggests that about 20 people were killed, making it "the deadliest use of force by the party-state since the [1989] Tiananmen [Square] massacre."¹⁸ It is clear that environmental activists ignore the longstanding Chinese premium on social stability at their peril, even if achieved through repressive means.

Despite these significant setbacks, the growing record of citizen activism in environmental cases suggests that ecological considerations will have significant influence in shaping the course and nature of China's pursuit of development and prosperity.

II. PARTNERSHIP ON ENVIRONMENTAL LAW & POLICY

Against this backdrop of a still nascent environmental movement in China, academic leaders from Vermont Law School (VLS) and Sun Yat-sen University (SYU) School of Law in Guangzhou (capital of Guangdong Province) met in April 2004 to sign a memorandum of agreement pledging to work as institutional partners on strategies to help mitigate the negative environmental and social costs generated by China's virtually unchecked economic growth and development. The initial efforts under this partnership involved the sponsorship of collaborative research projects on environmental law and policy undertaken by pairs of students from both institutions. Supported by a grant from the Lingnan Foundation and working under the supervision of their respective faculty members, the student researchers came together on the SYU campus in Guangzhou to present their findings to a university audience. At least two published

17. *Id.* art. 26.

18. Shapiro, *supra* note 10, at 57.

research projects have already emerged from these collaborative efforts.¹⁹

In September 2006, VLS received a three-year \$1.8 million grant from the United States Agency for International Development (US AID) to fund the VLS-SYU Partnership for Environmental Law in China. By facilitating the transfer of knowledge and technology through conferences, training sessions and workshops, and creating further opportunities for collaborative research by faculty and students, the partnership seeks to advance environmental and energy law and policy in China under the rule of law. In particular, this initiative seeks to address the serious environmental problems and energy needs that are associated with China's ever-growing market economy by focusing on the following three core strategic objectives:

1. Strengthen individual and institutional capacity among Chinese educational, governmental, non-profit organizational, and business sectors to become more effective environmental and energy problem-solvers, giving due consideration to issues of individual and property rights.
2. Improve the enabling conditions—policies, systems, laws, and regulations—within China's legal infrastructure that will advance the development, understanding, and enforcement of environmental and energy law in China in a manner that facilitates the development of and reliance upon the rule of law.
3. Enhance municipal, provincial, national, and international networks among individuals and institutions in China in a manner that advances the internalization and sustainability of best practices in environmental protection and energy regulation.

Early initiatives in pursuit of these core strategic objectives include co-sponsorship of the *Vermont Journal of Environmental Law's* annual Symposium that brought together some of the leading activists and policy-makers working to improve China's record on environmentalism and sustainable growth. Another major gathering of legal scholars, governmental officials, business leaders, and citizen groups will take place in May 2007 on the SYU campus in Guangzhou. This event will focus attention on China's energy efficiency needs and sustainable development, with a particular focus on the latest and most comprehensive draft national legislation on energy conservation to be enacted by the PRC. The draft

19. Heather Jarvis & Wei Xu, *Comparative Analysis of Air Pollution Trading in the United States and China*, 36 ENVTL. L. REP. 10, 234 (2006); Jesse Moorman & Zhang Ge, *Promoting and Strengthening Public Participation in China's EIA Law and U.S. NEPA*, 8 VT. J. ENVTL. L. 281 (2007).

legislation covers energy use in multi-sector areas of the economy, including industrial production, building and construction, transportation, and power generation.

Finally, the institutional partners will select a cohort of faculty scholars and student researchers who will be in residence at VLS for varying periods of time conducting research, enrolling in classes, and otherwise working actively to enhance their personal and professional capacities to become more effective problem-solvers in the area of environmental and energy law and policy.

CLOSING THOUGHTS

This partnership is but one of many existing in China that calls attention to the serious ecological considerations implicated in the course of economic development in both China and the United States. While most of the project activities will shine the spotlight on developments in China, there will be numerous opportunities to reflect candidly on developments in both nations and employ those strategies that offer the most promise for each nation to engage in sustainable development. For example, it is noteworthy that China has enacted efficiency standards for automobiles constructed or sold in China that are far more stringent than US standards. By 2008, as noted by energy expert Amory B. Lovins, “it will be illegal to sell many inefficient U.S. cars [in China.] If American automakers do not innovate quickly enough, in another decade [we] may well be driving a super efficient Chinese-made car. A million U.S. jobs hang in the balance.”²⁰

Policy-makers both in the United States and China are slowly beginning to understand the important link between forward-looking environmental and energy policies and sustainable growth. These are not mutually exclusive goals but achieving them will require the concerted and coordinated actions of citizen activists, academics, business leaders, and government officials. This partnership is a modest but important contribution in service of those objectives.

20. Amory B. Lovins, *More Profit with Less Carbon*, SCI. AM., Sept. 2005, at 74, 83.

