Human Rights & Human Welfare

Volume 1 | Issue 4 Article 1

10-2001

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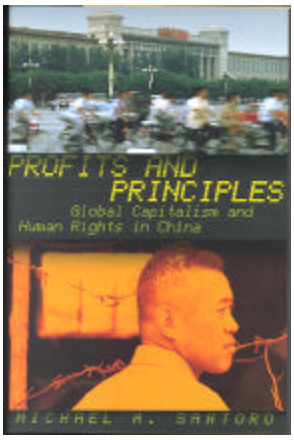

Capitalizing on Market Reforms: Facets of Legal Development in Contemporary China

By Stefanie Elbern

A review of Law and Justice in China's New Marketplace by Ronald C. Keith and Zhiqiu Lin. New York: Palgrave, 2001. 315pp.

and

Profits and Principles: Global Capitalism and Human Rights in China by Michael A. Santoro. Ithaca, NY: Cornell University Press, 2000. 256pp.

Since the suppression of Tian'anmen protestors in 1989, the People's Republic of China's human rights record has continually been a subject of worldwide public and academic scrutiny. What information is available to the interested reader helping to visualize the abstract notion of this record? Scholarly monographs on human rights in China form part of the literature on Asian values and the cultural relativity of human rights, concentrate on specific aspects of China's creation of new laws, or blend in the more general discussion of China's participation in the international legal order. Statements coming from the media or civil society actors in "the West" are abundant and mostly portray a rather dark picture of human rights violations in China, whereas the official Chinese response to external criticism has virtually remained unchanged for more than three decades and continues to concentrate on the positive aspects of China's performance. Given this broad spectrum of sources of information, what gaps need to be filled by further research? The two books under review discuss different approaches to improving human rights protection in China. Sources for change might come from the outside, via values imported by business managers with clearly defined ethical beliefs and standards. However, a drive towards change might already be anchored within the country, requiring no impetus from abroad: In their attempts to introduce to China modern legal concepts such as the rule of law, Chinese reform jurists have successfully capitalized on the logic of market reforms. They have long since begun processing foreign legal theory in conjunction with Confucian and socialist ideology.

Law and Justice in China's New Marketplace

Law and Justice in China's New Marketplace is co-authored by two Canada-based scientists, namely a Canadian political scientist and a Chinese sociologist. The authors, Ronald Keith and Zhiqiu Lin, provide their readers with an in-depth account of the emergence and evolution of a new jurisprudence in China in the years after its opening-up to the world. Their book portrays the influence of legal theory on the building of a rule of law society in the country. The main sources for their analysis are articles in China's leading law journals as well as interviews and discussions with reform jurists, for the most part integrated as citations.[1] The authors almost exclusively focus on information from within China in an effort to fill the gap in knowledge regarding "who is contributing what to jurisprudence in China and why" (p. 223).

The book's introductory first chapter explores the nature, context and evolution of legal debate since 1978. Chapters 2-5 exemplify these notions of jurisprudence by examining four areas of legislation where the structural changes induced by market reforms made a considerable impact: social justice, labor relations, property and ownership rights, and judicial justice. In the concluding Chapter 6, the authors sum up the implications of the analyzed trends in legal reform for an assessment of the influence of jurists and jurisprudence in contemporary China. They underline how, according to the results of their analysis, the international community can most effectively support the reform process in the country.

Keith and Lin depict how a 16-character slogan, formulated in 1978 by Deng Xiaoping in reaction to the legal nihilism of the cultural revolution, paved the way for new developments in Chinese legal theory: "There must be law, it must be relied upon; it must be enforced; and law-breakers must be dealt with." In accordance with the logic of this slogan, legal theory at this point of time introduced the concept of law as a means of protection against political extremism and the excesses of a system of "rule by man." Already as early as the mid 1980s, a national educational campaign brought forward the "rule of law" as antithetical to "rule by law" or "rule of man," but the process that led to formal anchoring of the concept within the legal system took almost two decades: The "rule of law" was enshrined in the Chinese constitution by amendment in 1999, after much lobbying by legal reformers and several initiatives of Jiang Zemin (especially since 1996/97), the complete command being: "Running the country according to law and establishing a socialist rule of law country."[2] The main driving force behind the introduction of the concept is pinpointed in a second, equally important principle: "The market economy is a rule of law economy."

In their book, the authors have identified a set of interlinked questions which stimulated legal debate in China after 1978: Should there be a "unified jurisprudence" on the basis of a single, grand

[1] Pinyin translations of important political and legal terms and slogans are integrated in the text. Indices at the end of the book contain Chinese characters for the names of jurists (together with their institutional affiliation) and for legal terms cited throughout the book.

[2] The adjective "socialist" was included as a reference to Deng Xiaoping's theory on "socialism with Chinese characteristics."

theory or rather a pluralization of legal theory that would reflect the multiple interests in the market economy? Which values should rule the process of modernization? How could the undeniable diversification of interests within Chinese society be captured in legal theory and law? Which role was to be attributed to the state in the construction of new markets and legal systems? As demonstrated in various citations throughout the book, reformers, conservative jurists and politicians in China were equally aware of the potential for social injustice and inequality created by market reforms, but the solutions suggested by them varied with the willingness to disassociate with a once monolithic ideology. While pre-1978 jurisprudence was state-imposed and unified in its one-dimensional orientation towards class analysis - premising an ideal synthesis of state, collective and individual interests - the authors show that new theory had to take into account the emerging complexity of social structures, thereby diversifying itself.

Keith and Lin point out that within the new market economy, a "value problem" emerged not only for jurisprudence: it asked for proper balancing of values such as justice, efficiency, social control and rights protection. The political answer to this question is conveyed in the slogan "efficiency is primary and fairness, supplementary," but "political highlighting of efficiency as primary has not meant that jurists are free to ignore the plight of those in society who become more or less marginalized in the rush to seize market opportunities" (p. 11). According to the authors, the ubiquitous possibility for social unrest prompted the leadership to support a set of legislation that gives special protection to the rights and interests of the most vulnerable groups in society, namely children, the elderly, women and the handicapped. The older concept of state-determined rights and obligations of the individual was re-evaluated for the benefit of a new definition of "'rights' in correlation with the subjective manifestation of 'newly emerging interests' in China's transitional society" (p. 9). The combination of rights and interests was important in its contribution to the development of a human rights theory in China. In the words of two Chinese jurists: "Interest is a value that is subjectively determined and pursued. It refers to the extent to which subjective needs become manifest and to the degree of this materialization. Human rights…are integral to human needs and social reality….These needs are fundamentally and inherently human in nature; they are expressed in the subjective pursuits of man…" (Luo Mingda and He Hangzhou, 1993, cited on p. 11). While the state's objective determination of group interests was formerly taken for granted and the "will of the ruling class" was relied upon to dictate the proper distribution of rights and obligations, advocacy of a "will of the people" and even civil society action were, by some progressive theorists, understood as better fitting substitutes: "In modern society, both civil society and the political state have achieved full development in their coexistence….Since the reform and opening…the centralized economic system, in which group and individual interests were utterly overwhelmed by state interests, has been shattered as the criteria of rights is replacing the criteria of power" (Ma Changshan, 1995, cited on p. 8). The authors do not skip the fact that for more conservative jurists, such attitudes constituted a new "rights fundamentalism" that could become a threat to the state.

The book delineates the process whereby changes in civil and public law have led to a multiplication of legal subjects that have to be treated as equals before the law. Together with challenges to the former unity of state and society, this process necessitated a redefinition of the state's position in society. The new slogan "small government, big society" was created in reaction to the irrationalities of the planned economy where an iron rice bowl was available to all members of

society, regardless of their individual merits. While supporting the new importance of individual rights, in its vagueness the slogan left doubts among legal theorists about the degree to which the protection of rights would inevitably require an activist state to reinforce the "rule of law" and to secure social and judicial justice. A project based on the principle of "small government, big society" on the island of Hainan revealed the tantalizing aspects of the dilemma: "While much of the rule-of-law argument reiterated the supremacy of the law and the importance of the impersonal and independent dimensions of the rule of law vis-à-vis politics, there was also strong argument in favor of an activist state, which would not only consolidate the rule of law, but would also legally and politically support social justice" (p. 236, 237). As stated by the two authors, whether or not a contraction of the state's activities is in effect an empowerment of the individual or, on the contrary, a convenient method for deferment of social responsibilities of the state, is not only at the center of the Chinese debate on a new "balance of values"—it informs reform debates in all states participating in the process of economic globalization.

For Keith and Lin, the most evident dilemma of reform jurisprudence is contained in the reorientation of judicial justice. Before the revisions of both China's criminal law and criminal procedure law in 1996-97, the flexibility of the law was used as a guarantee to insure social control and public order. The widespread use of analogy[3] was justified through its positive effects on lowering crime rates. Substituting rule by law with rule of law necessitated the introduction of the principles of *nullum crimen sine lege* ("no crime without a law") and *nulla poena sine lege* ("no punishment without a law"), together with a noticeable concern for defendants' rights. A "new conception of balance putting rights protection into the scales of justice along with social control" (p. 229) could nevertheless not prevent a proliferation of the number of crimes punishable with the death penalty, despite serious objections by Chinese jurists (pp. 225-6). The experiences in criminal law reform characterize the role of jurists and jurisprudence in China. As Keith and Lin show, it depends on the issue in question whether or not political interference can lead the reform process away from implementation of the principle of rule of law. By holding lectures on legal theory to politicians, often resulting in mass campaigns with the aim of spreading new legal theory, and by participating in the drafting process of new law, jurists in China have formed a common strategy towards implementation of the concept of rule of law: "…they act as a professional interest group or lobby which attempts to move Party and NPC [National People's Congress] leadership in a certain legislative direction," having achieved a "qualitative conceptual breakthrough in what is admittedly a composite and uneven—but surprisingly positive—trend towards modern rational legal culture in China" (pp. 245-6). This includes a pivotal role for jurists in formation and introduction of human rights ideals into Chinese laws.

According to the authors, the best way to support reformers within the country is by recognition of the steps already taken towards the emergence of a "rule of law" system, because it would give encouragement to those inside the country who have further steps in this direction on their agenda. A "[c]ritically balanced assessment of Chinese human rights performance must take into account

[3] Analogy is explained by the authors as a process "whereby unstated categories of crime were freely extrapolated from supposedly analogous crimes which had already been fully stipulated in the law's provisions" (p. 207).

important new internal subscription to the positive prospects of 'internationalization.' Basic changes in Chinese legal thinking are not merely designed to hoodwink foreign critics" (p.234).

Commencing my critique on the book, I would like to draw attention to the promise contained in its title: Law and Justice in China's New Marketplace. Accordingly, the reader expects to be informed about law and justice in China's "socialist market economy." When judging the proliferation of the concept of justice in any given society, one would certainly—as a first step—look at the country's legislation. But what judgment is to be expected when the analysis stops short of integrating the judicature within the country? Keith and Lin aim at introducing to the reader the conceptual basis for legal reform in contemporary China, but is it valid to describe a "legal culture" without taking into account the judicial reality (that which is called *Rechtswirklichkeit* in German legal terminology)? To do justice to the authors, they indeed do tone down some of their positive statements on China's adaptation of "rule of law," e.g. by qualifying movements towards judicial independence, supremacy of the law and equality as "theoretical concerns" or by saying that the Party leadership was construed as "favoring the basic tenets of the rule of law" (pp. 242-3, emphasis mine). I agree with them in that it is impatient to assume that "because not all of the new substance of law has been consistently operationalized, the issues of contemporary jurisprudence and related human rights legislation are dubious" (p. 232). However, if the authors want to enable their readers to make a "balanced assessment of Chinese human rights performance" (p. 234), adjudication is not a field to be overlooked. It would have been interesting to read comments by reform jurists on their understanding of the influence jurisprudence has on Chinese judicature. In a move to improve overall qualification in legal professions and possibly in order to bring closer together legal practice and scholarly theory, the NPC has recently passed two amendments on laws concerning the professional requirements for jurists: students wishing to become judges, prosecutors or attorneys have to qualify by participating in nationwide exams. The amendments even include a reexamination of all judges already in office, with a possibility for dismissal if qualifications cannot be proven.[4]

What I understand as the complexity of combining "law and justice" in China's legal everyday life is expressed in the following example. According to the 1997 revisions in Chinese criminal law, employing flexibility in adjusting crimes to punishments to achieve social control is no longer a valid modus operandi. Nevertheless, flexibility still seems to be in place when it comes to dealing with dissidents, such as members of the *Falun Gong* group. Already in October 1999, the Standing Committee of the NPC had accepted an expansion of the criminal law, extending its applicability to religious cults. More recently, on June 10, 2001, another "official statement" by the Chinese Supreme People's Court and the Supreme People's Procuratorate was published on "questions concerning the application of laws in dealing with offences in the field of organization and abuse of cults."[5] The possibility alone to release such arbitrary interpretations of adopted laws makes any well-intentioned theory on the protection of defendants' rights superfluous.

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[4] Heike Holbig, "Staatsexamen für Juristen ab 2002" (State examination for jurists from 2002), *China aktuell*, July 2001, p. 720. Translation mine.

[5] Heike Holbig, "Neue juristische Handhabe zur strafrechtlichen Verfolgung von Falungong-Anhängern" (New legal approaches in prosecution of Falungong members), *China aktuell*, June 2001, p. 596-597. Translation mine.

Profits and Principles – Global Capitalism and Human Rights in China

Rather than asserting progress in legal human rights protection since China's opening to the world in the late seventies, in his book Profits and Principles – Global Capitalism and Human Rights in China, Michael Santoro tackles the practical question of how to conduct business in a country whose human rights conditions remain sub-optimal. Chapters 1 and 2 describe how China's undeniable attractions to foreign investors have led to the emergence of two distinctive business strategies in China. Profiting from China's cheap and abundant labor force, a multinational firm might, via direct investments or via subcontractors, choose to pursue a *cost-minimizing strategy*. Reports from China and other third-world countries have shown that a subcontracting system allows foreign investors to keep the level of commitment to their partners low: by quickly relocating their businesses whenever economic rationales necessitate a shift, the pressure to produce as cheaply as possible is transferred onto local trading partners. Within a subcontracting system, problems with local labor standards and responsibility for abuses are consequently evaded.

Companies that follow a *market building strategy* have, according to Santoro, completely different motivations and tactics. Faced with saturated markets in most parts of their trading areas, these firms want to shift parts of their business activity to the fast-growing Chinese market with its equally fast-growing number of solvent consumers. For them, investment in local human capital is less costly than the employment of expatriates while, at the same time, assuring an inside understanding of Chinese consumer and business preferences. Their success is only measurable over a long period of time and consequently affords a higher degree of commitment to employees than cost-minimizing strategies. Out of self-interest, these firms "do good in order to do well," creating a positive spin-off of human rights and democratic values. By giving concrete examples for this kind of company behavior, Santoro counters persevering stereotypes of Western sweatshop companies in China. He draws attention to the positive impact that morally responsible multinational firms and devoted managers can have on their employees' standard of living as well as on the transmission of Western values and ideas to those parts of Chinese society that have direct contact with foreign companies.

As Santoro points out, China's entry into the World Trade Organization (WTO) would considerably increase foreign direct investments in China and open up markets for those companies that want to conquer new segments of the Chinese consumer market. If such multinational firms do indeed promote democracy and human rights in China, as Santoro suggests in his analysis, this would, in his opinion, give powerful arguments to US foreign policy makers in favor of China's access to WTO, in line with "comprehensive engagement" policy. The two business strategies give rise to a set of questions that are explored in the ensuing chapters: Are multinational firms to be held responsible for human rights violations committed by their business partners? Which minimum standards are to be followed and who should control their implementation?

In order to reinforce evidence for the positive human rights spin-off of market-building firms and to counter legitimate skepticism of human rights advocates, in Chapters 3 and 4 Santoro develops further the economic concept of positive externalities of foreign investment, such as creation of jobs, transfer of capital, knowledge and managerial skills. Instead of choosing indicators that would allow direct, albeit elusive measurement of human rights progress, Santoro suggests that

intermediate variables favorable to improvements in civil and political rights are more suitable for measuring progress. As intermediate variables, Santoro proposes:

- Economic Prosperity. Citing Przeworski's empirical work on "Sustainable Democracy" (p. 42 and endnote 15), Santoro argues that economic prosperity has been shown to be a necessary precondition for democracy, and that multinational firms, "simply by increasing the material wealth of society" (ibid.), contribute to the development of democratic rights.

- Education of Workers. Via education, it is possible to transmit new concepts such as promotion based on individual merits (in contrast to the conventional Chinese system of promotion according to political rank and personal connections).

- Information Sharing. This concept substitutes a tightly controlled flow of information and introduces team work and initiative as opposed to mute and resigned obedience.

Santoro concludes that, by changing patterns of employees' behavior in the realm of leadership and subordination, multinational firms are in a position to change the country's social and political culture into one where "liberal democracy can thrive" (p. 43).

In Chapters 3 and 4, Santoro reflects on the general influence that can reasonably be attributed to multinational firms operating in China: "…although multinational firms will have only a modest impact on the course of human rights, they are by far the most important foreign influence within China" (p. 38). The last part of this statement seems to be incorrect when contrasted with the scenario that Keith and Lin depict in Law and Justice, where international law and even foreign legal experts receive acknowledgment as important factors influencing China's way to human rights implementation. Santoro contradicts his own argument in the last chapter of his book, where he states, "it is international institutions…that have the greatest potential influence on general human rights conditions in China" (p.195). Multinational firms are but one—and not by far the most important—foreign factor influencing societal development in China. The question of the companies' influence becomes even less clear cut when the data that Santoro presents in these chapters is reconsidered: How much influence can multinational companies have on cultural and political change if they employ but one percent of the Chinese population (see statistics on pp. 54-5)? How seriously should one take the qualification made by Santoro himself that, rather than multinational firms, "domestic political and social forces mostly will determine China's future" (p. 38)? Seen in connection with his assertion on page 22 that "one even hears whispers…that the worst instances of human rights abuses of workers occur by Asians against other Asians", the reader is left to wonder whether these facts would not at least partially cast a doubt on the grasp of Santoro's spin-off theory.

The insecurity that remains with regard to the influence of multinational firms is mirrored in the five caveats with which Santoro amends his theory: Firstly, not all profit-seeking business activities in China produce a positive human rights spin-off. Second, the group of people affected by this change constitutes only one percent of the Chinese work force, possibly a part of the society too small to make a difference. The third caveat regards the gap between business and politics—patterns of behavior that are acceptable in the work place might nevertheless be hard to transfer in a private

environment that is determined by different codes of behavior. Fourth, Santoro warns that one should be careful not to overrate the influence that foreigners can have on societal change in China. Finally, the situation in China might not be transferable to other developing nations with less competitive market pressure. In China, companies feel the need to offer outstanding technology and management methods (including educative measures) in order to outrival their numerous competitors on the Chinese market. Whereas the current economic situation might indeed be a special one in China, I cannot agree with Santoro's view that China might also be altogether a different case "because it is precisely the cultural factors described in this Chapter [4] that are holding back the country's progress in human rights and democracy… In other countries, the sources of human rights problems may not be a function of cultural norms" (p. 70). The notion that it is exclusively cultural norms which are at the root of China's human rights problems seems highly debatable in that it ignores long running debates on humanitarian ideals contained in Chinese philosophy.[6] Following this line of Santoro's argumentation, the universality of human rights is restricted in favor of a relativist concept of human rights that accepts cultural limits to human rights implementation.

Chapter 5 describes the implications of Santoro's spin-off theory for the American foreign policy concept of "comprehensive engagement." Against the historical background of the long battle over China's most favored nation-status and the Clinton administration's decision to favor engagement rather than sanctions, Santoro pleads for the implementation of a "comprehensive engagement plus" policy. Economic engagement is to be combined with a credible measure of—wherever possible—multilateral pressure on China that would lend full support to reformers within China. A firm stand on human rights in international forums and an unremitting support for jailed dissidents are, according to Santoro, less aggressive measures than pure economic sanctions. Seen from the outside, the possible retaliations for American pressure for human rights reforms that Santoro mentions at the end of Chapter 5, are just the kind of threat to America's national economic interests that the American business community is unlikely to risk. As convincing and appealing as his concept might appear to people without rigid economic interests in China, it remains highly debatable whether this solution is practically feasible.

In violation of international as well as national norms, employees in China's labor-intensive manufacturing sector are exposed to physical mistreatment, violation of minimum wage standards and severe risks to health and safety. Santoro argues that doing business in China can put managers in a position where their decisions on questions concerning the protection of human rights show their personal character, as well as convey a public image of their company – and might be decisive for their future careers. They could be faced with a situation where they have to decide for or against protection of their Chinese employees against repressive acts by the Chinese government. Three attempts to provide guidelines for proper moral business conduct are introduced in Chapter 6.[7]

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[6] To name but one monograph on this subject, see William T. DeBary, Asian values and human rights: a Confucian communitarian perspective (Cambridge, MA: Harvard University Press, 2000).

[7] Namely, guidelines by the American Chamber of Commerce in Hong Kong, by Human Rights Watch and by former President Clinton's administration.

Santoro comes to the conclusion that none of the three proposals provides practical help for managers. The guidelines either understate or overrate the protective power of multinational companies and completely fail to integrate other actors bearing moral responsibility, e.g. nation states, NGOs or consumers.

Assessing the history of international human rights in the twentieth century, Santoro comes to the conclusion that, until now, no consensus has been reached on human rights ideals, nor has a sufficient institutional structure for human rights protection been established. Taking multinational firms as a substitute for institutionalized protection is, in his opinion, not an adequate solution to this dilemma. As demonstrated in Chapter 7, business executives do not posses the political authority of elected representatives, nor are they in the first place professionally equipped to take over the task of setting standards. A reasonable allotment of moral duties is what Santoro tries to achieve with his "fare share theory of human rights responsibility." This theory acknowledges a collectively shared responsibility where multiple actors and measures enhancing human rights are correlating to each other. In order to evade a "responsibility gap," duties must be allocated to specific actors with a clearly defined extent and limit. Highest efficiency in human rights promotion and protection for Santoro requires determinations of:

- The relationship between actor and (potential) victim. The closer the relationship, the higher the actor's responsibility.
- The effectiveness of measures in question. The impact of a given measure depends on the actor's position. A measure that does not yield positive results is worthless.
- The capacity of the actor. Out of fairness and rationality, the costs of specific measures and actors' ability to absorb them must be taken into consideration.

Santoro concludes that multinational firms will be most effective in upholding human rights in individual cases—protecting their employees—and accordingly less efficient in general attempts to put pressure on the Chinese government. In any case, limits to individual duties must not be understood as preventing courageous personal initiatives.

Santoro's fair share theory requires that multinational firms ensure protection of human rights by their contracting partners. He postulates a responsibility to choose partners carefully and monitor their operations, even at the costly risk of being forced to end cooperation with norm-breaking partners.[8] Seen from the producers' side, a voluntary enforcement of human rights standards will result in comparatively higher costs for the complying companies. Companies have to spread knowledge about the "hidden qualities" that increase the price of their products and make them more expensive than "low-standard products." Addressing consumer's responsibilities, Santoro

[8] Following a similar strategy, Levi Strauss and company decided to maintain their commitment to the firm's social responsibility policy toward its workers and substantially reduced production via subcontractors in China after the adoption of "Global Sourcing Guidelines" in 1992. For a detailed account and discussion of the case, see George DeMartino, "Enslaved to Fashion: Corporations, Consumers and the Campaign for Worker Rights in the Global Economy," *Human Rights & Human Welfare* 1 (2): 29-37 (2001).

stresses that only consumers who know about these "hidden qualities" are able to make an informed choice. He reports on several larger attempts to soften marketplace penalties for complying firms: standard audits with certification marks, industry-wide codes or product labeling. The examples he presents in Chapter 9 illustrate the dilemma of these diversified, voluntary approaches: without a common standard that would allow comparison of codes, certification marks and product labels, these approaches will most certainly result in confusion of consumers. Consequently, Santoro demands that NGOs shift their focus away from blaming multinational companies, to education and promotion campaigns that heighten consumer awareness in developed countries. Giving credence to the fairness of his theory, he argues that, "unless and until Western consumers are willing to absorb some of this cost in the form of higher prices, then it is grossly unrealistic to expect multinational corporations to solve the problem of labor abuses by adopting human rights codes of conduct" (p. 176). I agree with Santoro's educational approach towards Western consumers, especially when combined with consumer and worker education in less developed countries: a constantly growing middle class in China is an essential market for products of "market building firms." Raising awareness about production facilities in China with the ever-growing group of Chinese consumers should not be overlooked and could indeed be a valuable sales pitch for the Chinese market itself. Due to the spatial closeness of producer, product and consumer, educational campaigns in China will be as effective as those led in developed countries, even in a situation where, financially, a true choice for better products is only beginning to develop in China. Santoro furthermore discusses the repeated efforts to integrate workers' rights into the WTO agenda and the failure until today to do so. He undertakes to deconstruct common myths about winners and losers of minimal labor standards and underlines that any incomplete, voluntary system of standard setting offers welcomed loopholes for transgressors. Following successful examples in environmental standard setting and protection of trade-related property rights, Santoro finally pleads for "a WTO labor provision that protects workers without being protectionist" (p. 178).

In his last chapter, the author leaves no doubt that multinational firms have the moral duty to protect dissidents working for them, even at the cost of being expelled from doing business in China. Demanding engagement of companies with regard to the overall human rights situation in China, as Human Rights Watch has done in its business guidelines for China, is, however, in Santoro's words "out of touch with the reality of operating a multinational corporation in China" (p. 189). No single foreign company has enough power to put pressure on the Chinese government without having to fear sincere retaliations.[9] In a last step, Santoro wants to offer concrete advice for business executives under constraint to minimize economic losses resulting from active protection of workers' rights. He ventures that rather than ignoring or denying human rights issues, managers should prepare themselves early enough for morally difficult decisions, even before starting a business in China. Drawing on their knowledge about Chinese cultural specifics, managers are asked to be resourceful and flexible in implementing their moral principles in order to outwit Chinese bureaucracy wherever possible. Santoro claims that control over human resources is of utmost importance for foreign companies in China. Companies should reduce the influence of governmental agencies on hiring and firing personnel. According to the author, this is best achieved

[9] The author admits that the situation might, however, be different in other countries, such as with Shell in Nigeria.

by the companies using professional managerial arguments in the face of governmental pressure to dismiss dissident workers. Finally, Santoro advises that contacts with other companies and trade associations will offer a forum for discussion of experiences and common strategies. Redefining the tasks of NGOs, the author assigns them monitoring functions for corporate behavior that violates fair share principles.

The basic idea of corporate social responsibility, as put forward by Santoro, has already been taken up on an international level. At the World Economic Forum in Davos in 1999 (too late to be included in Santoro's analysis), UN Secretary-General Kofi Annan initiated the so-called "Global Compact" project. The project aims at combining expert knowledge of senior executives from major corporations with that of leaders of labor, human rights, environmental and development organizations. The "Nine Principles" of the Global Compact ask business leaders not only to integrate principles of human rights, labor and environmental protection into their corporate practice, but also, in a step that goes beyond Santoro's demands, to support appropriate public policies in these areas.[10]

A New Attitude toward Human Rights Protection in China?

The question of "correct" moral behavior when dealing with a country with continuing violations of human rights surfaces in all spheres of China's ongoing integration into the international community, the most recent example being the acceptance of Beijing as the location for the 2008 Olympic games. Is such a leap of faith advisable when dealing with a repressive regime? Crediting the Chinese government with one's faith would mean relying on the first steps already taken towards a rule of law country, as described by Keith and Lin. Their book leaves its reader with a rather positive impression of the future of human rights in China, at least on a theoretical level. The heated public debate preceding the final decision in favor of Beijing as Olympic City has shown that—depending on one's beliefs and personal background—there is no unison answer to this problem.[11] Although the authors count on different sources for change, namely internal or external, they insist that by integrating China further into the world community, there is at least a chance that positive influences might find their way into the country's human rights performance. As market reforms have been and will continue to be a motor for legal development in China, I propose that integration into the world community must include economic integration of the country.

While I would underline that Santoro's book is readable and recommendable for the audience it wants to address, I feel less secure in terms of whether his recommendations are concrete enough to convince his readership of their practicability. Weighing the costs of support for dissent, business managers are likely to rely on the substitutability of labor in a huge country like China, rather than investing time in preconceiving a personal human rights strategy within the special circumstances of

[10] For further information on the Global compact, please refer to http://www.unglobalcompact.org/

[11] A good overview mirroring the different standpoints on this issue is contained in an online forum, "Should Beijing get the games? The Observer debate," at http://www.observer.co.uk/china/story/0,10604,514491,00.html The comments collected comprise, among others, statements by The Dalai Lama, Amnesty International, The Chinese Embassy in Great Britain and a Britain-based Falun Gong praticioner.

their respective working sphere. The book might be more useful to NGOs in that it points out a new aim for lobbying: instead of turning to "faceless" companies, NGOs might do better if they addressed directly the people behind the organizations.

Contrary to Santoro's "manual", its intense scholarly style commends Law and Justice to a rather small and highly specialized readership. In my eyes, the laudable efforts of Chinese jurists to develop a rule of law society in China should be imparted to a wider audience, especially with regard to decisions on China's further integration into the international community. The book offers a rare opportunity to get a glimpse, across language barriers, of scholarly debates within China, even for non-Chinese-speaking scientists, and might be an incentive for further scholarly cooperation with China.

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