

Perspectives

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1. From the Editors

At this unusual moment of our time, we are glad to present you with a new issue of *Perspectives*. This week, the United States and the “Coalition of the Willing” entered the second week of War on Iraq. Should and could democracy be exported from the U.S. to Iraq? Under “Commentary,” Paul Carrington offers his point of view. In the December 2002 issue of *Perspectives*, Ronald Dworkin and Liufang Fang presented two different views on the values, approaches and moral responsibilities of Chinese intellectuals and academic games in general. Here under “Debate,” Yanan Peng follows up with an insightful analysis of the two published essays and offers his own take. Under “Law,” Qiang Guo reviews the policies implemented and progresses made by the Chinese government in its attempt to open up China’s legal market to foreign firms. Finally, under “Special Reports,” Xue Song and Junfu Zhang relearn the communication skills native to China during their teaching trip to Shanxi University and offer valuable suggestions for future teaching projects. In another report, Bei Wu goes beyond the experience of lecturing at Shanghai University to offer a general analysis on China’s community-based long-term care system.

As always, we hope you enjoy these essays as much as we did, and we invite you to join our discussion any time and anywhere.

The Editors

2. Exporting Democracy To Iraq

(Paul D. CARRINGTON)

[Editor Note: Professor Carrington wrote this essay on March 9, 2003.]

In September 2002, the President of the United States proclaimed *The National Security Strategy of the United States of America*. In that document, he foretold that, as if for the first time,

[T]he United States will use this moment of opportunity to extend the benefits of freedom across the globe. We will actively work to bring the hope of democracy, development, free markets and free trade to every corner of the world.

He renewed this plan in a speech at the American Enterprise Institute on February 28, where he promised that in the event of war American forces would remain in Iraq no longer than necessary to establish democratic institutions in that country. And not a day longer! He made this pledge yet again on national television on March 6.

Would that it could be so. Like the American President, I believe in democracy and the market economy. I am not a pacifist and I believe that the United Nations must prove its integrity by holding Iraq to the promises made over a decade ago, by military means if necessary. But before drawing the saber in anger, statesmen must reckon the risks and the costs, and this has not been done. A military victory in Iraq may gratify many of the President's constituents if it is sudden and costless, but it will have the contrary effect almost everywhere else in the world. It will certainly not improve the chances for democracy in Iraq, or even in the U.S.

The American President speaks as a person with scant experience with any social order other than the empowered one that has surrounded him all his life. That he made his remarks at the American Enterprise Institute ("AEI") suggests that he has embraced the optimism expressed in 1991 by Joshua Muravchik, an AEI scholar whose book, entitled *Exporting Democracy*, held out the occupations of Germany and Japan as models of what we might expect to do to the whole world. The American President has also adverted to those examples. The occupations of Germany and Japan were indeed remarkably successful in their political consequences. But both nations had previous democratic traditions that had been devastated by the villains who led them into World War II and could be restored mostly by the German and Japanese people themselves. Moreover, those cultures shared other traits that made democratization relatively easy. The most important of these is that their national governments served a homogeneous people not

divided by caste, race, religion, or language. The indispensable key to self-government is a measure of mutual trust of the sort those peoples share with one another. Derived from that mutual trust is the expectation of a level of integrity in a nation's legal institutions, which in turn is needed to maintain a healthy market economy.

The American President also speaks as a person with scant knowledge of the history of America's efforts to disseminate its democratic ideals and institutions. American lawyers have had over 200 years of experience in striving to give democracy to foreign lands. While there is much more democracy in the world than there was, this has had little to do with America's efforts. Most relevant to today's issue is America's experience in the Philippines. While the American military forces occupied that archipelago from 1898 to 1941, the purpose was to establish democratic traditions there. Thousands of American schoolteachers, lawyers and religious missionaries spent their lives in service to that cause. Yet only a few years after the U.S. withdrew its forces, there was chaos. It led, as chaos generally does, to a dictatorship. Today there is again chaos on the southern island of Mindanao. That situation reflects the deep divisions of culture, language, religion and caste that afflict the people of the Philippines, and make the future of their republic uncertain notwithstanding America's extended investment of human resources.

American military forces also occupied Cuba from 1898 to 1902. Havana at one time had the cleanest streets in the western hemisphere, thanks to the occupation government led by General-Doctor Leonard Wood. But despite the efforts of many citizens, stable democratic institutions were not established. Indeed, numerous other Latin American and Caribbean nations have experienced the evangelical efforts of *norteamericanos*, and the results were never positive.

Because trust is their essential ingredient, democracy and market economics cannot be exported to socially unstable nations. Political ideas and institutions can be borrowed or imported by peoples who are reasonably united in that purpose. Outsiders can be a little help, but not much. As Constitutional Law Professor Woodrow Wilson wrote in 1908: "Self-government is not a mere form of institutions. It is a form of character. It is not a thing that can be given to any people. We of all people in the world should know this."

Iraq, divided as it is by Shiites, Sunnis and Kurds with longstanding hatreds of one another, is extremely infertile soil for democracy. I was once told by a lawyer in a nation riven by divisions of class and ethnicity: "The right my people most value is the right to go next door and beat up their neighbor without him being able to fight back." Such divisions are a cause of the corruption endemic in most parts of the world. The acid of that corruption eats out the core of trust on which democratic law and market economies depend. William Howard Taft, while Commissioner of the Philippines, lamented that he found it very difficult to persuade public officers that their offices were other than opportunities for private emolument. The mutual trust needed by Iraq cannot be bought for them with their oil money, in part because that money is destined to provide emoluments to their public officials.

Moreover, the American President speaks as a person with scant sensitivity to the predictable response of many people around the world who do not like bullies. It is precisely for those reasons that many of America's allies dismiss him as a reckless Texas cowboy who treats other peoples as broncos to be ridden or steers to be thrown.¹ Not only will America be unable to impose democracy on Iraq, but its efforts to do so will only magnify the risks to itself. Yes, the U.S. can destroy some missiles, bombs, chemicals and germs. But those who hate America can and will make anthrax or nerve gas in their bathtubs if necessary, and it seems that they will soon be able to buy nuclear weapons from a store in Pyongyang. A military occupation by the United States will have given not only Iraqis but many other Arabs the incentive to employ weapons of mass destruction against America. It is their motivation that most needs address, not their hardware.

The occupation of Iraq by the United States will be a boon to those who recruit for Al Qaeda. Al Qaeda is in substantial part a response to American support of a secular Jewish state in the midst of a Muslim universe. The existence of such organizations was foretold more than a half century ago by some wise and conservative lawyers advising American Presidents – Henry Stimson, Dean Acheson, Robert Lovett, John McCloy, James Byrnes to name some – who understood as the current American President does not -- the passions aroused when people are pushed out of the way by bullies. They foretold that many Muslims from Morocco to Pakistan would identify with the suffering of Palestinians and would hold it against America, some with deadly passion.

The hatred the U.S. will elevate by the military occupation of Iraq will be even more elevated if, as promised, the Iraqi army is successfully destroyed with the ease with which hostile forces in Serbia and Afghanistan were dispatched. Those recent events have likely contributed to the mistrust of the United States even by former allies. Most people admire those who put their own lives at risk for a worthy cause. But few admire those who employ remote and risk-free methods to execute those whom they disapprove. Such methods will evoke even more desperate responses against the vulnerable citizens of a nation conducting such executions.

If the United Nations could have been induced to deal with Hussein, it would have been an extraordinary achievement for the Bush administration. But a military occupation of Iraq by the United States will surely be a disaster for the U.S. The violent responses expressing the hatreds foreseeably aroused will lead to more repressions here in the U.S. As our own anxieties rise, our own democratic traditions will subside. We have had repeated experiences to teach us that, too.

For these reasons, the United States should have submitted to the governance of the Security Council. If that is too humiliating for President Bush to bear, he should be urged or even required to leave his office in the hands of someone whom the world does not see as a cowboy eager to do immense harm to gratify his own vanity.

(Paul D. Carrington is a professor of law at Duke University. He has done legal missionary work in several countries and has since 1999 been at work on a book,

Unalienable Rights: The Efforts of American Lawyers to Give the World The Rights Proclaimed in the Declaration of Independence.)

¹ In 1950-1952, the author was proud to be a member of a group known as the Texas Cowboys.

3. Taking Dworkin Seriously

(Yanan PENG)

Professor FANG Liufang recently published his interesting review (Fang, 2002) of Professor Dworkin's trip to China in 2002.¹ This article, "Taking Academic Games Seriously," is extremely insightful and penetrating. I am deeply impressed. It rightly points out the awkward situations in which Chinese academic games take place. It also concerns itself with the strategies that Chinese scholars can use to promote the fundamental social transition in China. To this extent, I firmly stand by Professor Fang.

However, I hesitate to stand by his position towards Professor Dworkin, which may reflect a common Chinese response to foreign criticism and pressure. I would like to describe my opinions on this issue—that is, how to take Dworkin seriously. I will argue that we should focus on the substantial content, not the moral and rational bases of foreign criticism, and that we need to promote substantive dialogue with foreigners without overthrowing the procedural foundation of their voices.

There might be an inherent contradiction in Professor Fang's article, if I read it correctly. In the first three paragraphs, his criticism on Chinese academic games appears to be even much more diabolical than Dworkin's. I extremely appreciate this insight.

However, Professor Fang begins to make a U-turn in the fourth paragraph. He starts to defend, though somewhat reluctantly,² the low-profile response to Dworkin's "provocation" by Chinese scholars.³ It may be seen as a subtle departure from his previous despairing picture of Chinese academic games.

After defending the Chinese side, Professor Fang begins to attack the American guest. He criticizes Dworkin's comment on the *Zhang Jianzhong* case: he tries to take a neutral position and argues that Dworkin should not judge this "pure factual issue" on the bases of "news reports and Professor Jerome Cohen's comments on the case." To be sure, under the "principles of the rule of law advocated by Professor Dworkin himself," judges must base their judgments on the litigants' evidences, not on secondary sources. However, Dworkin is not a judge. Official records and informal reports are both secondary sources to him. The decision of whether or not to trust a source is a matter of faith and reliability. Different from Dworkin, Professor Fang chooses to believe the government and seems to be waiting sincerely for the judge's ruling.

Judges are respectable, but they are not always so, especially in the Chinese context, with which I suppose Professor Fang is more familiar than Dworkin. It is not a secret that the Chinese government sometimes, if not often, violates fundamental rights of individuals through the process of the so-called factual finding. We may stand by a wrong side if we always rely on the government's version of stories.

Professor Fang completes his U-turn in paragraph six. He challenges Dworkin's complaint that Chinese scholars pay much more attention to "relatively theoretical jurisprudential issues" than to specific cases. In his argument, Professor Fang rediscovers the significant progress of legal protection in China, achieved through "scholars' general discussion." He finally realizes that those actors in the "adverse-selection" game could also substantively promote Chinese legal reform. Professor Fang thus seems to draw a very different picture of Chinese academic games here.

I absolutely agree that these two pictures are both true. They reflect the different sides of Chinese academic games. The interesting thing is the opportunistic position shift made by Professor Fang. Under the impact of a "patriot" complex, many Chinese scholars who can boldly criticize aspects of Chinese society in their classrooms often respond to foreign criticisms with a defensive and resistant attitude, no matter how similar the foreign criticisms are to their own. I start to assume that Professor Fang's article is also influenced by that complex at this point. And it seemed to be proven true when I finished reading this essay.

After Professor Dworkin made use of his freedom of speech in China, which he found to be "puzzling" and "surprising" because of the latitude given to him by the Chinese authorities,⁴ Professor Fang could at this point remind us of the awkward reality of how foreign and Chinese academics are treated differently. On the contrary, he reminds us that Dworkin might not "possess more moral courage" because he did not need to run any risk that his Chinese colleagues would run. This is a very brilliant perspective. And it is, in a sense, fairly true.

To be sure, it is very likely that Professor Dworkin enjoyed much more freedom of speech in China than his Chinese colleagues because of his ethnicity and nationality. But that is not Dworkin's fault. It actually results from the Chinese government's cautious discrimination. I am not sure whether Dworkin would have kept silent if he had been a Chinese professor without any privilege of a distinguished American guest. In fact, many native Chinese scholars are even bolder than Dworkin. They have demonstrated no less courage than what Dworkin showed in China. This hypothetical question aside, I am more interested in what Dworkin should do in his current role if he must not appear to "possess more moral courage."

Dworkin seems to have had many other options. He could have not taken advantage of his freedom of speech and pretended that he did not perceive any disaster in China. He could have just shown up in these "inferior shows" for "social purpose." After all, red wine is much more pleasant than the "red corner"⁵ at a Chinese banquet. Unfortunately,

Professor Dworkin was so foolish as to take this right seriously. He came, complained, and criticized. This “spirit of Don Quixote” really made us uncomfortable.

In the shade of Dworkin’s false courage in “fighting,” Chinese people’s “compromising” and “tolerating” must be both forgivable and reasonable. As expected, Professor Fang continues to evaluate these “human natures” on which “authoritative politics are actually built,” thus pushing his domestic defense to a new level—not only is scholars’ “general discussion” a smart strategy, but most people’s choice to “wait passively” may also be a rational decision.

After justifying Chinese’s silence and impotence, Professor Fang goes further to challenge foreign criticisms. Regardless of the similarity between the opinion of Dworkin and that of many other Chinese insiders, Professor Fang thoroughly overthrows the foundation of foreign criticisms.

In this argument, Professor Fang begins with the statement that “everyone has the right to choose the manner in which he or she bears his/her own moral responsibilities.” This personal sovereignty argument is very similar to Dworkin’s second principle of human rights that “one person has special responsibility for the success of each life—the person whose life it is.” (Dworkin, 2002, p.65) Professor Fang thus seems to pick up his rival’s weapon. However, he uses it in quite a different way. In Dworkin’s hands, this principle is a sword to pierce tyranny.⁶ In Fang’s hands, this theory is a shield against foreign pressure. This might be a typical attitude of many Chinese nationalists: “Yes, we are in trouble, but whatever, it is our own business and has nothing to do with you. Why do you care?”

Not only do foreigners have no reason to care, but they also have many reasons to shut up. Professor Fang continues to allege that outsiders “have neither moral superiority nor actual wisdom to TELL others what risks to take at what time and in what circumstances.” And to ask insiders to rise up may even be an immoral evil.

I do not recall Dworkin calling upon Chinese scholars to “rise and fight.” And I suspect that Professor Dworkin would readily support Professor Fang’s statement that “people can fight in more than one way.” However, even if Dworkin had really asked his Chinese colleagues to run risks that he would not run himself, would he deserve to be described as evil? I hesitate to say so.

Calling upon others to sacrifice themselves can be justified in many cases. For example, we can hardly blame a General when he commands his soldiers to go to battlefields and run the risks that he will not directly run into himself. I also do not think that the World Bank was evil to ask a country to implement a financial reconstruction therapy and shoulder the risks that World Bank itself would not confront. Even Karl Marx called upon foreign proletariats to overthrow the rule of the bourgeoisie and run the risk that he would not run. Suppose that in 2002, an American scholar came to Beijing and called for revolution. He or she could very likely be deemed immature, but not necessarily immoral.

I also hesitate to say that foreigners must not have “actual wisdom” to provide applicable plans. Human societies are as similar as they are different. Foreign civilizations may accumulate relatively abundant experiences in certain areas, which can be applied to other societies. And foreigners may also be able to understand the situations of other cultures by many means. It is not impossible that certain foreign projects, under certain circumstances, might be even more workable than certain domestic ones. Native ignorance is not a rare phenomenon. Furthermore, even if not applicable as a whole, a foreign lesson may still be, at least partially, inspiring and educational. Accordingly, we may listen to the foreign voices carefully before we come to our conclusion. This position seems to be more reasonable than unexceptionally assuming foreign opinions to be lacking in “actual wisdom.”

Certainly, foreign theories must be localized according to specific domestic situations. However, the dogmatization of Marxism is not Marx’s fault. The accompanying disasters also cannot justify requiring Marx to shut up. “Do not blame your food because you have a bad appetite.”⁷ If outsiders provide a bad suggestion and then insiders accept, it is the insiders, not the outsiders, that should be blamed and be responsible for any tragic result.

The key point lies in the free speech and personal sovereignty arguments. Everyone, even the outsider, has a right to express his or her opinions. It is the insiders’ responsibility to deliberately consider all the suggestions and make final decisions.

True, “no one can make decision for others.” (Fang, 2002) But I did not believe that Professor Dworkin had such a decision-making power. He did nothing that overstepped his privilege to free speech. What he did was only to attend several workshops and express his views. I cannot possibly imagine that Dworkin intended to put a gun to a Chinese guy and force the latter to run the risks that he would not run.

More shocking to me, Professor Fang seriously calls for not taking foreign lessons seriously. He insists that taking them seriously would unexceptionally result in “a major disaster.”⁸ I would rather believe that Professor Fang adopts a very different definition of “taking foreign lessons seriously” from mine.

In my opinion, taking foreign solutions seriously does not mean accepting or rejecting them in entirety. It means deliberately researching their necessity, possibility, feasibility, and applicability. Chinese people have experienced many disasters when we adopted some foreign suggestions without deliberate consideration. China also missed many historic opportunities when we shut the door to foreign inspirations. In these two cases, foreign lessons were taken thoughtlessly, not seriously. It is hard to find any disaster caused by taking foreign lessons seriously. Probably Professor Fang can find one.

In my view, Professor Fang's article raised a question worth of thinking by all Chinese intellectuals: how should we use our limited time and energy to respond effectively to foreign criticism and pressure? On the foreigners’ side, it is important for them to

understand their Chinese audience before they give speeches. For example, it is meaningless, and maybe even purpose-defeating, for foreigners to argue for fundamental rights before Communist bureaucrats. But when facing frank and direct criticism from the so-called outsiders, it is also unnecessary for Chinese intellectuals to overreact and even doubt their morality. If we Chinese scholars can redirect our energy and time spent on questioning the moral and rational foundation of foreign lessons to reading, thinking and learning their substantive contents, I believe that we will achieve more.

(The author is a JSD candidate at Yale Law School.)

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¹ Professor Ronald Dworkin visited China in May 2002 and published his report in September 2002 (Dworkin, 2002).

² Professor Fang states that he has "no intention to defend those Chinese scholars who call themselves liberals." See Fang, 2002.

³ See Fang, 2002. "Nevertheless, keeping a low profile in government organized semi-official academic events usually is not due to lack of courage or being hypocritical, the simple truth is that people may not want to answer certain questions under certain circumstances."

⁴ Professor Dworkin was "puzzled" and "surprised" to have opportunities to speak and discuss on such sensitive issues in China. See Dworkin, 2002, p. 64.

⁵ "The Red Corner" is a Hollywood movie about a brilliant American attorney (played by Richard Gere) who was trapped in the Chinese criminal legal system. See relevant movie review at, e.g., <http://www.all-reviews.com/videos-4/red-corner.htm> (last visited on March 11, 2003).

⁶ See Dworkin, 2002, p.65. "The second principle requires that government respect the rights that individuals need to direct their lives: the right, among others, to practice any religion freely, to speak their minds on matters of political and moral consequence, and to choose political positions and associates for themselves."

⁷ A line of poetry by Tagore is similar but subtly different: "Do not blame your food because you have no appetite." See Rahindranath Tagore, *STRAY BIRDS* (No.40), at 16, New York: The Macmillan Company, 1916.

⁸ See Fang, 2002. "Unfortunately, whenever those lessons were taken too serious and actually implemented, China saw a major disaster."

4. Are Foreign Lawyers Gaining Ground in Asia?

(Qiang GUO)

Japan, a jurisdiction with the most restrictive regulations on foreign lawyers, are reported to loosen those restrictions, starting year 2004.¹ The changes, however, are only incremental and will liberalize Japan's protectionist system only slightly.²

Interestingly, Chinese regulators recently also sent encouraging signals to foreign lawyers. What is the message and how excited should foreign lawyers be? These are the issues this article is to explore.

In its WTO Schedule of Specific Commitments (hereinafter the Schedule),³ China committed to open its legal market for foreign competition, subject only to certain specified limitations on market access and national treatment.

The PRC Ministry of Justice on July 4 2002 issued the *Implementing the <Administration of Representative Offices of Foreign Law Firms in China Regulations>* (hereinafter the Regulations) *Provisions* (hereinafter the Provisions), effective as of September 2 2002. These Provisions wrap up the domestic documentation of China's commitments in trade in legal services when it became a World Trade Organization member on December 11 2001.⁴

It seems that the Chinese regulator is conscious about its WTO obligations and will open up the domestic legal market to foreign lawyers as promised, but only in a cautious way.

RESTRICTION ON HOST COUNTRY LAW PRACTICE

China schedules Chinese law practice as a market access limitation. That is, foreign representative offices can provide legal services only on home country law, international law and the law of a third country where the lawyers of the law firm are qualified, but never host country law.⁵

This restriction is essentially a nationality requirement that ensures only Chinese nationals can practise domestic law. Nationality requirements in legal services are actually quite common, especially in services such as notary and representation before courts, and are commonly justified on the ground of "public function".⁶

Under the Provisions, any of the following shall be deemed as "Chinese legal affairs" set out in Article 15 of the Regulations, and thus must be entrusted to local firms as mandated in the Schedule:

- (i) to engage in any litigation in China as a lawyer;
- (ii) to give legal opinions or certifications for any specific issues in any contracts, agreements, articles of association, or other written documents with respect to application of Chinese law;
- (iii) to provide legal opinions or certifications for any acts or incidences with respect to application of Chinese law;

- (iv) to provide opinions or comments in the capacity of attorney in arbitration on the application of Chinese law and on facts that involve Chinese law;
- (v) to go through, on behalf of clients, any registration, change, application, filing or other procedures with any Chinese government authorities or any other organizations that are authorized by laws or regulations to carry out administrative functions.

To prevent exploitation of any loopholes, no representative office or any law firm that establishes representative offices may: (1) invest in any Chinese law firm, whether directly or indirectly; (2) operate on an associated basis with any Chinese law firm or Chinese lawyer with which they share profits or risks; (3) establish a joint office with any Chinese law firm or dispatch personnel to be engaged in legal services in any Chinese law firm; or (4) manage, operate, control or enjoy equity interests in any Chinese law firm.⁷

The restrictions on Chinese law practice, as defined, although not technically running afoul of China's commitments, may raise significant concerns about its reasonableness. Although it could be argued that litigation is a *public function* and opining on application of Chinese law is thus *practising law*, the exclusive delegation of functions such as purely administrative filings to local counsel might be considered over-inclusive.

The prohibition, intended to protect the local bar from fierce foreign competition, may in fact further circumscribe the representative offices' practice and thus downplay the meaningfulness of China's promise to open its legal market.

For example, under the Schedule representative offices are allowed to enter into "contracts to maintain long-term entrustment relations" with local firms.⁸ However, as discussed below, the Provisions make such entrustment agreements very difficult to realize. Hence it may raise eyebrows with regard to China's obligation under the General Agreement on Trade in Services (GATS) to accord law firms from other WTO countries treatment "no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule".⁹

RESTRICTION ON LOCAL HIRING

Chinese practising lawyers, or "Chinese national registered lawyers" in the rhetoric of China's Schedule, cannot be on the payrolls of foreign representative offices unless they surrender their PRC licenses. This is a national treatment limitation.¹⁰

During China's accession negotiations, in response to questions from members of the Working Party, the Chinese representative clarified that "Chinese national registered lawyers", as indicated in China's Schedule, were those "Chinese nationals who had obtained a lawyer's certificate and were holding a Chinese practising permit and were registered to practise in a Chinese law firm".¹¹

The Provisions make clear that no Chinese practising lawyers who are employed by a representative office can provide services in relation to Chinese law as a "Chinese legal

consultant (Article 38). In short, once legally employed by a representative office, one loses his capacity to practise Chinese law as either a PRC admitted lawyer or a PRC legal consultant.

What is considered as “employment” for this purpose? Under the Provisions, any of the following activities shall be deemed as employing PRC admitted lawyers (Article 40):

- (1) to reach employment or labour agreement(s) with PRC admitted lawyers;
- (2) to establish *de facto* employment or labour relationships with PRC admitted lawyers;
- (3) to reach an agreement with a PRC admitted lawyer on sharing profits or risks or participating in management;
- (4) to pay any remuneration, fees or business dividends to PRC admitted lawyers; or
- (5) to employ PRC admitted lawyers to engage in external business activities on behalf of the representative office or the law firm to which the representative office is affiliated.

This “employment” list is troublesome. Does the regulator mean “PRC admitted lawyers” as individuals or as a group such as in the form of a law firm? Following the logic of the Provisions, the long-term entrustment relations referred to in China’s Schedule can be read as a form of employment as well, since the Schedule specifically provides that such “entrustment” allows the foreign representative office to directly instruct lawyers in the entrusted Chinese law firm, as agreed between both parties, and presumably to pay the instructed lawyers. What then is the rationale that a representative office can “employ” (as loosely defined in the Provisions) a local law firm (as permitted by the Schedule), but not the lawyers within that firm? Don’t we need individual lawyers to execute any such entrustment agreements?

It is unclear whether the “contracts to maintain long-term entrustment relations” referred to in the Schedule is meant to mean a conventional entrustment agreement (*wei tuo he tong*) or an agency agreement (*dai li he tong*) in Chinese law.¹² If it is the latter, a representative office must act on behalf of, and in the name of, the principal.¹³ If the former, the entrusted party can act in his own name or in the name of the entrusting party, as mutually agreed.¹⁴ In either case, the contractual parties to a long-term entrustment contract should have discretion as regards to the terms and conditions, while the Provisions (especially in Article 40, Item 5) constrain such the discretion for no clear policy reasons.

It is noticeable that national treatment is treated differently for services than for goods in the framework of WTO. Under the General Agreement on Tariffs and Trade (GATT), national treatment is a general principle, while in GATS it is a “specific commitment”, and hence one of the negotiated rights and obligations. On the other hand, GATS has very stringent requirements for national treatment. National treatment under GATS means *de facto* equal treatment- the first time in an international treaty- meaning strictly “no less favourable than it accords to its own like services and service suppliers”¹⁵ (subject to any conditions and qualifications set out in a schedule). Therefore, without

such scheduling, a “formally identical or formally different” treatment, although perfectly neutral on face, may nevertheless be considered “less favourable” if it “modifies the conditions of competition in favour of domestic services or service suppliers”.¹⁶ Although China has listed the local employment ban in its Schedule, the attempt to interpret the term “employment” too broadly might nonetheless raise the national treatment concern.

The ban, designed to counter a potential “brain drain”, may for the time being protect the local bar in its turf battle for local talent. In the longer run, however, it may backfire. Since fewer practitioners will get the valuable training opportunities that international law firms have been providing, the ability of the local bar to foster top-tier practitioners with international legal skills will actually be limited: while a handful of top law graduates may still get posts as legal assistants, more seasoned lawyers will find their experience less attractive, if not useless, to foreign employers.

“ACTUAL NEED”

The Provisions are presumably an attempt to provide further clarity and transparency as required by GATS. However, despite their bona fides, not all efforts are easy to follow.

For instance, the Regulations require an aspiring law firm to have an “actual need” for setting up a representative office, but without laying out the details (Article 7, Item 3). The Provisions, on the other hand, list the elements for determining the “actual need”, but the “need” as defined reads more like that of the local community than of the applying firm:

An “actual need” is determined according to: (1) the social and economic circumstances of the place where the representative office is proposed to be established; (2) the need for legal services where the proposed representative office is to be established; (3) the size, time of establishment, major business areas and specialist strengths, analysis of the business prospects and future development plans of the proposed representative offices; and (4) the Chinese legal restrictions on the offering of specific legal services or affairs.

This may only be a matter of poor drafting; still, the legitimacy of the regulator’s concern over the “actual need” requirement can not be overlooked, considering several instances of “shelf registrations” by foreign firms with their representative offices staffed with nothing but a license.

DOMESTIC REGULATION

For historic reasons, China relies more on administrative regulation than on self-regulation by bar associations for housekeeping purposes.

Under GATS, domestic regulations (measures of general application affecting trade in services) cannot be applied in a way to nullify or impair any existing sectoral

commitments in a manner that could not reasonably have been expected at the time the specific commitments in those sectors were made.

Because domestic regulations are not currently subject to scheduling under GATS,¹⁷ GATS calls upon the Council for Trade in Services to develop necessary disciplines to ensure that any domestic regulation measures do not constitute unnecessary barriers to trade in services. Pending the entry into force of any such discipline, each member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

It is of course an arguable issue whether the representative offices have expected, or shall have reasonably expected, the essence and extent of any such regulations. However, once members resort to WTO dispute resolution, it will be up to a panel of trade experts to decide what is an “unnecessary barrier” and what is “reasonable, objective and impartial”, the result of which is not always favourable and predictable.

Therefore, to avoid unnecessary confrontation with other members on domestic regulation, it is probably wise for regulators to rely more on self-regulation to achieve the same policy goals. Meanwhile, at a minimum, there must be an open channel for discussions with the foreign legal service providers.

CONCLUSION

All in all, the Provisions, together with the Regulations, help to put China’s commitments in legal services into context. The overall message is encouraging and there is no doubt that the Chinese government is serious about carrying out its treaty obligations. The Provisions also show the regulator’s willingness to be flexible where necessary and advisable. For example, realizing the difficulty many firms might have in providing the “partnership agreement” as provided in the Regulations,¹⁸ the Provisions allow certification of certain details of the agreement, in lieu of proving the agreement per se.¹⁹ Therefore, we don’t share some of the accusations that are based on distortions and half-truths about China’s attitude towards foreign law firms without first carefully studying the relevant GATS documents and domestic regulations.²⁰

The legal profession has a unique characteristic arising from its role as intermediary between the citizen and the law and between the citizen and the state. As such, the negotiators for trade in legal services and the national regulators alike always face a special dilemma created by the inherent tension between intense national concern over legal industry and the GATS approach (most significantly, an unconditional Most-Favoured-Nation principle).²¹ In this sense, it is unrealistic to expect the regulators to always act in favour of foreign law firms; and for the same reason, the foreign practitioners should keep in mind the Japanese saying, *tatema/ honne*, which means “the façade versus the real situation.”²²

(The author is an associate of Debevoise & Plimpton, an international law firm. The article is republished, with certain updates and amendment, from the original version

which first appeared in the October 2002 issue of *China Law & Practice*, a Euromoney publication, under the title “*Time To Honour China’s WTO Commitments: Ministry of Justice Issues Implementing Rules Regarding Foreign Law Firm Administration.*”)

¹ See Tatiana Boncompagni, *Japan Loosens Rules on Foreign Law Firms, But Not Much*, New York Lawyer, Jan.23, 2003.

² *Idem.*

³ Protocol on the Accession of the People’s Republic of China, Annex IX, Schedule of Specific Commitments on Services, WT/ACC/CHN/49/Add.2.

⁴ For a translation of the Regulations, see *China Law & Practice*, March 2002, 16(2), pp. 43-53, and also see Wong & Cox, “Foreign Law Firms Set to Expand in China,” same issue, pp. 54-58 for a commentary on the law. For a translation of the Provisions, see *China Law & Practice*, September 2002, 16(7), pp.37-49.

⁵ Foreign representative offices can only: (1) provide clients with consultancy on the legislation of the country/ region where the lawyers of the law firm are permitted to engage in lawyer’s professional work, and on international conventions and practices; (2) handle, when entrusted by clients or Chinese law firms, legal affairs of the country/region where the lawyers of the law firm are permitted to engage in lawyer’s professional work; (3) entrust, on behalf of foreign clients, Chinese law firms to deal with the Chinese legal affairs; (4) enter into contracts to maintain long-term entrustment relations with Chinese law firms for legal affairs; and (5) provide information on the impact of the Chinese legal environment. See the Protocol Annex IX as referred to above for details.

⁶ WTO Council for Trade in Services, Background Note by the Secretariat, S/C/W/43 (July 6 1998).

⁷ See the Provisions, Article 39.

⁸ See *supra* note 1: A foreign representative office may “enter into contracts to maintain long-term entrustment relations with Chinese law firms for legal affairs”.

⁹ GATS, Article XVI.

¹⁰ See *supra* note 1: “The representative office shall not employ Chinese national registered lawyers outside of China.” There is no equivalent term “outside of China” in the Chinese version of the Schedule.

¹¹ Report of the Working Party on the Accession of China, WT/ACC/CHN/49, at 67.

¹² The Chinese version of the Schedule uses the term *wei tuo*. However, it says that the English edition shall be the official and governing source of the Schedule.

¹³ WANG JIAFU, ZHONGGUO MINFAXUE/ MINFA ZHAIQUAN, at 724, FALU CHUBANSHE (1991).

¹⁴ *Idem.*

¹⁵ See GATS, Article XVII: 1.

¹⁶ *Idem*, Article XVII: 3.

¹⁷ Although domestic regulations are not subject to scheduling under GATS, many members have scheduled them in the legal services sector, many of which are licensing and qualification requirements.

¹⁸ See the Provisions, Article 8 (3).

¹⁹ *Idem*, Article 6.

²⁰ See, e.g., *Zhongguo Shibao* on August 25 2002, where the writer attacks the Provisions generally for violating the spirit of the WTO and attacks in particular the ban on the practice of Chinese law, without acknowledging that it is one of China’s negotiated rights.

²¹ Richard Guo, “*Piercing the Veil of China’s Legal Market: Will GATS Make China More Accessible for U.S. Law Firms?*” *Indiana International & Comparative Law Review* (Fall 2002).

²² *Supra* note 1.

5a. Teaching “Game Theory” in Shanxi: A Teaching Trip Report

(Xue SONG and Junfu ZHANG)

This teaching trip to China in November 2002 was sponsored by the OYCF (Overseas Young Chinese Forum) Teaching Fellowship program.

I. Preparation

The course we proposed to teach was “Game Theory and the Social Sciences.” In September 2002, we prepared the syllabus. The course was designed as a series of nine lectures on basic concepts in game theory and their applications in social sciences such as economics, political science, and sociology. Each lecture was designed to run for two hours. The syllabus also specified reading materials.

Next we prepared the lecture notes. The notes covered all the important materials and were to be distributed as the primary reading material to the students so they didn’t have to take notes during class. We would prefer the students to focus on the lectures.

Our host university is Shanxi University of Finance and Economics (SUFU), located in Taiyuan, capital of Shanxi Province. OYCF’s previous teaching trips were all destined for Renmin University at Beijing, so SUFU represented a new territory. Our family members in Shanxi helped to establish the connections with this university.

Not surprisingly, before we approached SUFU, they knew nothing about OYCF and its teaching fellowship program. Though there are introductory materials on the OYCF website, but they are all in English therefore not very useful in helping facilitating communicating with people in China. To convince SUFU that we were serious, we prepared in Chinese a brief introduction about OYCF and the fellowship program and sent them to SUFU with the course syllabus. SUFU soon agreed to host our teaching trip.

In early October 2002, we started to talk with SUFU about the details of the arrangement when we finalized the travel itinerary. However, we found the communication was sometimes difficult and frustrating. It seemed that, after had left China for so long, we were no longer used to the way people in China make decisions. Relying on family members to transfer messages also complicated the communication process. Misunderstandings arose. The fact that we offered to teach for free might have caused our host to question our true motive. They also seemed, understandably, to have concerns about the possibility that we might give casual comments on sensitive issues.

The communication regarding the teaching schedule ended up not very productive. Consequently, we got on the plane without knowing exactly who would be our audience and what was our exact schedule at SUFU. But we believed that all would be worked out once we could talk to the people at SUFU face to face. And we were right.

II. Teaching

We arrived in Beijing on November 10, 2002. And arrived Taiyuan by bus on the late night of November 12. We lived with Xue Song's parents in Taiyuan.

At 8am in the morning of November 13, we discussed our teaching schedule with Dr. Fuchun Zhang, associate dean of the graduate school at SUFE. Dr. Zhang stated their intention to get as many students as possible into our class. He also asked about the possibility of delivering the same lecture twice on two campuses, but unfortunately we wouldn't be able to do that due to our tight schedule. As hoped, both sides were able to come to an agreement quickly: we would restructure the course into a series of 6 lectures, 3 hours each, and deliver it to first-year graduate students in economics and management within the next 6 working days.

These students were taking a "Western Economics" course, which would cover an introduction to game theory. The lecturer of this course, Professor Hongmei Zhao, and Dr. Fuchun Zhang would like to incorporate our lectures into this course. If so, Professor Zhao would skip the game theory part but would test students using the materials that we would teach. Therefore we would not need to give a separate exam.

The first lecture started at 9am on November 13. The subsequent lectures were moved to 2:30pm to 5:30pm from the next day. It was a very big class. About 80 students closely followed our lectures. After each lecture, we stayed for another hour to interact with the students. In addition to game theory and economics in general, many students were curious about everyday life in the U.S. They were also eager to know how one could go to the U.S. to study economics. It was great fun to talk to them.

Our course was organized as follows. The first lecture introduced basic concepts in game theory started with the history of game theory and why economists wanted to study game theory. Students were all interested in life stories of the legendary John Nash and John Von Neumann. We then gave a very detailed introduction to the ideas of "game" and "Nash equilibrium."

The second lecture introduced the concepts of normal form game, extensive form game, subgame perfect equilibrium, backward induction, etc. We used many examples to help students understand those concepts. We also organized students to play some games in the class, including the prisoners' dilemma, the ultimatum game, the Vickery auction, and the one-dollar auction.

We discussed applications of game theory in economics in the third lecture. We covered the Hotelling model, the Cournot model, the Stackelberg model, the Bertrand Model, the Vickery auction, and the asymmetric information models.

The fourth lecture discussed applications of game theory in political science. We revisited the prisoners' dilemma and gave a detailed account of the Axelrod tournament

and the “Tit-For-Tat” strategy. We also talked about the voting rules, Arrow’s Impossibility Theorem, and the apportionment of congressional seats in the U.S.

The fifth lecture covered basic concepts in cooperative games, such as the core, the Shapley value, and the Nash bargaining solution. We also discussed the applications of cooperative game theory in cost allocation.

The sixth and last lecture introduced basic concepts in evolutionary game theory, such as evolutionarily stable strategy and stochastically stable state. We then discussed how those concepts could be applied to analyze social problems such as the formation of conventions, cultural evolution, and the emergence and persistence of residential segregation.

The course was a hit. The students welcomed all the lectures. In the last class, we asked the students to evaluate the course. Their responses were quite encouraging. They thought the lecture series was interesting and informative. They also liked our teaching style that encouraged student participation and interaction in class. Some students thought the tight schedule was intensive, although manageable. Many of them also offered thoughtful comments that would be helpful for OYCF to better organize its teaching program.

One thing that surprised us was the rapid advancement of teaching technologies on campuses in China. Although we created an electronic version of our lecture notes, we were fully prepared to use chalks and blackboards. However, we found that PowerPoint slides, digital projectors, laser pointers, and laptop computers were used extensively by college professors. We were quite old-fashioned compared to them. At the beginning, we were using color markers and a board. Only after the students urged us several times, we shifted to the digital projector. It was more efficient indeed.

III. Seminars

In addition to the course at SUFE, Junfu Zhang spoke at two seminars. On November 11, the second day after we arrived in Beijing, Junfu gave a talk at the China Center of Economic Research at Beijing University. At the talk, Junfu discussed his dissertation “An Evolutionary Approach to Residential Segregation,” which applies evolutionary game theory to explain the dynamics of racial housing segregation in the U.S. In the audience there were faculty members and graduate students. The discussion continued when we went to dinner with two faculty members and a graduate student after the seminar.

On November 30, the day before we left for the U.S., Junfu spoke to a small audience at the Shanghai Institute of Law and Economics (SILE), a newly established non-government research institute based in Beijing. The topic was “Lessons from Silicon Valley.” Junfu shared his research on the development of Silicon Valley, its unique culture of innovation and entrepreneurship, and the lessons China can learn from Silicon Valley in managing its own high-tech economy. Most people in the audience were

government employees in relevant fields. After the seminar, we had lunch with Zhiping Liang, the director of SILE, and an assistant director Wei Liu.

IV Suggestions

Since we were the first group on an OYCF teaching fellowship, what we learned from our experience might be helpful for the OYCF teaching fellowship committee.

(1) It will be very helpful if OYCF produces, in Chinese, an official introduction to OYCF and its Teaching Fellowship Program. It will help fellowship applicants to explain to potential host universities what the program is about.

(2) Some of the items on the “checklist” for fellowship recipients may be optional, such as, to test the students. The decision should be made based on the conditions and needs of the host university. Furthermore, in the future, it will be good to show the checklist to all potential applicants BEFORE they submit their applications so they can have some of the guidelines in mind when they contact host universities.

(3) Most Chinese students in the U.S. come from big cities in coastal provinces in China, and they naturally tend to go back to their hometowns or alma mater to teach courses. We think it will be a good idea for OYCF to explicitly encourage fellowship applicants to go to the west and smaller universities where their expertise is more needed.

(4) OYCF may consider advertising its teaching program inside China. On the one hand, a good public image may invite universities to come to us seeking cooperative opportunities; on the other hand, it may also help to expand OYCF’s fund-raising activities back in China.

(Xue SONG is an economist at The MEDSTAT Group, a health information company. Junfu ZHANG is a Research Fellow at The Public Policy Institute of California (PPIC), a private, nonprofit organization.)

5b. An Evaluation of the Emerging System of Community-Based Long-Term Care for Elders in Urban China: A Teaching Trip Report

(Bei WU)

Selected as an Overseas Young Chinese Forum (OYCF) teaching fellow in 2002, I was invited to teach a short-term course on policy perspectives on long-term care to sociology graduate students at Shanghai University, in Shanghai, China. The course was an intensive 24-hour course lasted for four weeks. I had a total of 12 hours of office time during the teaching period. This course was the first joint graduate course sponsored by Shanghai University and the Shanghai Civil Affairs Bureau. The class had an enrollment of 32 students. The class members were part-time graduate students employed in organizations affiliated with the Shanghai Civil Affairs Bureau. Many of the students

were either administrators from local civil affairs offices or committees on aging, heads of residential care facilities, or administrators from mental health hospitals.

Part A. Teaching At Shanghai University

I. Course Content and Format

Introduction to the United States' long-term care systems and policies covered half of the class time. The introduction encompassed several main topics: 1) definition and history of long-term care; 2) long-term care financing; 3) long-term care service delivery; 4) long-term care work force; and 5) the future of long-term care demand and supply. The remainder of the class was devoted to discussion of the current status of long-term care in China, and to what extent China can learn from the U.S. in developing its long-term care system. As many students had first hand knowledge of the field, they actively participated in class discussions. Students were asked to interview two to three administrators from local community service centers or agencies that provide community care services. I designed a survey instrument for the interviews that covered several dimensions: 1) demographic information of the institute; 2) current long-term care services provided by the institute; 3) work force issues; and 4) interviewee's job satisfaction. The instrument design was based on a review of literature on community-based long-term care in the U.S. and China. In addition, students were required to write a final report based on readings, class discussion and their field interviews. In the end, students interviewed administrators from 64 different community organizations that serve elders, and I interviewed staff from six agencies, resulting in a total of 70 completed interviews.

II. Site Visits

In addition to teaching in the classroom, I visited officials at the Shanghai Civil Affairs Bureau who were in charge of long-term care services and facilities in Shanghai. I spoke with them at length about current policies and the state of long-term care in Shanghai.

Based on recommendations from bureau officials, I visited two community organizations that provide services to elderly: the Jing An Temple Elderly Community Service Center, and the Golden Gulf Elderly Service Center. The Jing An Temple Elderly Community Service Center was the first center in Shanghai to provide home care for elders. The Golden Gulf Elderly Service Center evolved four years ago out of a company facing bankruptcy. As an elderly community service center and a nursing home, Golden Gulf is the only community service center in Shanghai that is a collectively-run enterprise. I also visited four other elderly service centers located in neighborhoods of various socioeconomic levels. In total, I visited six communities located in five districts. I interviewed many staff members at the neighborhood level and gained a first hand account of the current state of China's long-term care system. These communities were Peng Pu Street at Zha Bei District, Jing An Temple Street at Jing An District, Hong Qiao Street and Chang Ning Street at Chang Ning District, Si Chuan North Street at Hong Kou

District, and Golden Gulf (*Jin Se Hong Wen*) Nursing Home and Community Service Center at Lu Wan District.

I also visited Shanghai First Residential Care Institute for the Elderly (*Shanghai Di Yi Fu Li Yuan*) and Shanghai Third Mental Health Hospital (*Shanghai Di San Jing Shen Bing Yuan*). The First Residential Care Institute for Elderly is the most well-known resident care facility for the elderly in Shanghai. It has advanced facilities and employs skilled nursing personnel compare to other facilities in Shanghai. The institute not only provides care for elderly residents, but also contains an adult daycare center that provides care for elders in the surrounding area.

III. Additional Outside Classroom Activities

I am a board member of the Shanghai Research Center on Aging (SRCA). SRCA was very supportive of my activities. An SRCA researcher made arrangements for my visit to officials at the Shanghai Civil Affairs Bureau and accompanied me to four of the six sites that I visited.

On December 6 and December 18, I visited Fudan University Medical School (formerly Shanghai First Medical University), and met several professors at the School of Public Health to discuss potential collaborative opportunities.

On December 7 and December 12, I made two presentations on issues of elderly health care and health care policy for elders in the U.S. at the School of Continuing Education of Shanghai University.

On December 10, I made a presentation at the College of Oriental Culture on the current status and policy of long-term care in the U.S.

On December 19, 2002, at the Department of Sociology of Shanghai University, I made a presentation to graduate students on research methods in cross-cultural comparison. After my presentation, I was appointed adjunct professor in the Sociology Department.

On the morning of December 25, 2002, I was interviewed by a reporter from the "Shanghai Senior Post." The interview was published on January 10, 2003.

On the afternoon of December 25, 2002, I was interviewed on a live broadcast of East Radio Shanghai on how to develop China's long-term care system. The interview was well received, and the subdivision head of the radio program invited me to go back in the future.

Invited by the Associate Dean of School of Public Health at Wuhan University to discuss collaborative opportunities, I flew to Wuhan, Hubei Province on December 26. At Wuhan University, I met several professors and discussed two potential collaborative projects that we plan to conduct. I also made a presentation on the comparison of community-based long-term care between the U.S. and China.

In the following sections, I will briefly discuss the background of my course and some of the findings from my teaching and research trip. I will also try to offer some policy recommendations for improving China's long-term care system.

IV. Evaluation of the Class

As my lecture topic was on community-based long-term care, the Deputy Chairman of the Sociology Department at Shanghai University thought it would be a good idea for me to teach the students enrolled in a joint graduate program sponsored by Shanghai University and the Shanghai Civil Affairs Bureau. The graduate students enrolled in my class had first-hand experience in China's aging and social services. We had very lively and informative discussions (including arguments). I learned a great deal from these students. Several student papers provided insightful analyses on various issues concerning China's long-term care system. In addition, this teaching experience was a great networking opportunity for me to meet people in the social services field. Based on conversations with the students and the class evaluations, the course had a direct impact on the students' daily work. For example, one student told me that she planned to add more ethics training in her institute so her staff could be more respectful of elders' rights and privacy.

Part B. Research on China's Community-Based Long-Term Care System

I. Current Status of the Aging Population in Shanghai

According to United Nations' criteria, if one area or country's elderly population (persons aged 60 and above) reaches 10 percent of the total population, this area or country is called an aging society. In 1979 Shanghai became the first aging society in China when its elderly population reached 10.20% of the total population. Since then, the elderly population has grown rapidly due in part to China's one-child policy and an increase in life expectancy. In 1998, the proportion of elderly population aged 60 and over was 18.03% in Shanghai (see table 1).

Table 1. Growth of Elderly Population over the Past 20 Years¹

Year	Total Population		Population Aged 60 and Over	
	Number (10,000)	Increase Rate (%)	Number (10,000)	Increase Rate (%)
1979	1132.14	-	115.48	-
1982	1180.51	1.40	135.99	5.60
1990	1283.35	1.05	181.85	3.70
1995	1301.37	0.28	217.71	3.67
1998	1306.58	0.13	235.57	2.67

¹ Analysis of Aging Population and Community Medical Services in Shanghai (2001). Institute of Population and Development, Shanghai Academy of Social Science.

Table 2. Predicted Increases in the Elderly Population of Shanghai²

Year	Total Population	Percentage of Children	Population 60+	Percentage of Population 60+	Population 80+	Percentage of Population 80+
	(in 10,000)	(%)	(in 10,000)	(%)	(in 10,000)	(%)
2000	1343.54	14.05	238.85	17.78	30.01	2.23
2005	1347.37	12.73	249.91	18.21	38.75	2.82
2010	1372.02	13.88	287.28	20.51	46.67	3.35
2015	1388.22	14.44	350.02	25.32	54.19	3.81
2020	1389.01	13.92	435.68	30.46	49.69	3.47
2025	1373.32	13.01	468.85	32.73	52.44	3.66
2030	1345.98	13.02	462.30	32.31	66.65	4.66

² Source: Shanghai Research Center on Aging, 2002.

Table 2 demonstrates that the proportion of aging population will increase dramatically over the next 30 years in Shanghai. According to projections from the Institute of Population Study at Fudan University and the Shanghai Research Center on Aging, growth of the elderly population will reach its peak in 2030; at that time the number of the elderly aged 60 and above will be 4.62 million, or 32% of the total population.

II. Current Issues of Community-based Long-term Care

The demand for community-based long-term care becomes more urgent with the growth of the elderly population. Long-term care encompasses a broad range of services. Many of these services are needed daily by chronically disabled individuals over a prolonged period of time. These services include assistance with the basic activities of daily living (ADLs) such as bathing, dressing, eating, or other personal care. Elder services are also geared toward instrumental activities of daily living (IADLs) which could include household chores such as meal preparation and cleaning; life management such as shopping, money management and medication management, and transportation. These services include hands-on, stand-by or supervisory human assistance; assistive devices such as canes and walkers; and technology such as computerized medication reminders and emergency alert systems that warn family members and others when an elder with a disability fails to respond. Services also include home modifications such as building ramps and installation of grab bars and door handles that are easy to use (Stone, 2000). China has a tradition of caring for elders at home, with responsibility for frail elders falling exclusively on family members—mainly spouses or adult children—due to the underdeveloped economy and the traditional value set on filial responsibility. However, under the one-child policy, there will be fewer family members available to care for frail parents in the future. In addition, with the vast majority of adult children in the labor force, it will become more and more difficult to fulfill family responsibilities. Literature in the U.S. reveals that caregivers are more likely to develop stress and physical health problems as compared to non-caregivers. In addition, the literature also suggests that community-based long-term care can help caregivers with frail elders, decrease caregivers' stress, and help frail elders live independently in the community.

Compared to most developed countries, community-based long-term care is far less developed in China. In recent years Shanghai has experienced rapid economic growth, however, there exists a huge gap between the economic growth and social welfare development. Using Shanghai as an example, I will now illustrate several major challenges that China is facing in developing its long-term care system.

Lack of Community-based Services for Elders

Since 2000, the Shanghai Civil Affairs Bureau has required every street committee (*Jie Dao*) to establish a community service center. The purpose of this center is to provide services to meet their residents' daily needs, with elders being the main service group. The bureau has invested money at each district level to construct a building for the service center, and currently the vast majority of street committees have established a community service center. However, few have their own personnel/staff to provide direct services to elders. The vast majority of the centers serve as clearinghouses for home care services; community residents request services and the center matches them with registered service providers. The centers are not responsible for price negotiations or the types of services provided.

Lack of Funding to Support Social Services

With little government funding available, lack of funding is a very serious issue in China's long-term care system. The Shanghai Civil Affairs Bureau has traditionally been responsible for the care of elders who have met **all** of the following criteria: 1) childless, 2) no regular income, 3) no spouse, and 4) living alone. These elders apply for social welfare institutions when they become frail, but for the majority of frail elders, they or their family must hire a caregiver to provide the needed services. Currently, there are 14 community-based adult day care centers in Shanghai. Although there is a great demand for adult day care, many of the centers are poorly attended, due to the daily fee (on average 14 *yuan* per day) and a lack of transportation. However, centers that provide transportation report higher attendance rates than those who do not.

In 2000, China's Department of Civil Affairs initiated a "*Xing Guang*" plan. The department allocated 20% of the social welfare lottery money for building community service centers and helping with the cost of home care for poor and frail elders. However, this amount is very small. I discovered during my interviews that on average only one out of 1,000 elders in each *Jia Dao* received funding to hire home care service providers.

Lack of Trained and Reliable Work Force

An important issue facing China's long-term care delivery system is the lack of a trained work force. Caring for frail elders is a complicated task, requiring people with nursing skills and training in basic ethics. Several Shanghai government agencies, such as the labor bureau, the social security bureau, and the Women's Federation are providing free training in the social services field to laid-off workers aged 50 or less. This type of

training is called “*jia zhen*.” However, the majority of individuals who received *jia zhen* training did not want to work in the service field largely because these jobs are often low-paying, labor intensive, and carry low social status. Their family members may also prevent them from seeking this type of jobs because they are afraid of losing face by having a person in the family work in this field. The vast majority of the current work force in the field in Shanghai are migrant workers who come from outside the city, and who have little or no eldercare training. As no regulations have been enacted in the long-term care field, no employee/employer contact is required and often workers abandon their jobs, leaving elders and their families scrambling to find replacements. On the other hand, workers’ rights can easily be violated because there is no protection of these rights.

As Shanghai is one of the most developed cities in China, the issues discussed above could become much more serious in areas with less developed economies and health care systems, such as rural and remote areas which account for more than 70% of the Chinese population. In rural areas, many young people leave their home, their elders and their children to search for employment in the cities. As a result, the Chinese tradition of filial responsibility is neglected. The lack of basic health care infrastructure and social services for people in these areas poses a more serious situation. The percentage of elders with disabilities and chronic diseases is higher in rural areas than in urban areas, and social services are less affordable to elders in rural areas due to a lack of financial resources.

III. Suggestions for Developing of China’s Long-Term Care System

I offer the following suggestions for Shanghai and other cities at an advanced stage of economic development.

1. Increase Government Investment in Social Services

In many other countries, the majority of long-term care funding is provided by the government. In the U.S., even though 57.4% of the total long-term care expenditures are from federal or state funded programs, such as Medicare and Medicaid (National Academy on Aging Society, 1997), many gerontologists have criticized the U.S. government for not putting enough funding in long-term care. In order for Chinese elders to share in the country’s social economic development, more financial resources must be channeled into a long-term care program as part of the establishment of China’s new social welfare system.

2. Train Long-Term Care Workforce

Well-trained and stable long-term care work force is vital in providing community-based long-term care for elders. Each community center that is responsible for providing services in the community should have its own stable long-term care workforce (e.g. homemakers and home care aides). Training should include practical skills, ethics, and each worker should receive a training certificate upon completion of the course.

Evidence of completion of this course should be mandatory for employment in community-based long-term care positions.

3. Advocating Volunteerism in the Society

Volunteerism has long been a valuable supplement to a formal work force in the U.S. Volunteerism is deeply rooted in American society. Caro & Wu's study (1998) found that people aged 50 and above contributed an average of 6.3 hours per week to volunteer work such as taking care of frail elders and conducting community services. China's tradition of advocating the merit of serving other people has faded for the last 10 to 20 years due to the recent heavy emphasis on economic development. In order to establish a sound and healthy environment in China, re-establishing volunteerism is one of the important tasks to implement. The merits of volunteerism should be stressed beginning in childhood, with community service included in school curricula.

4. Establishing "Time Bank"

In 1997, in an interview with the Shanghai television station, I made the suggestion of establishing a "time bank." The concept is that people who provide services to others can count that time as manpower saving hours which can be deposited in a "bank." When they or their family members need assistance, they can withdraw equivalent hours from their "bank" account. In 1999, the Shanghai Research Center on Aging selected two districts and initiated a demonstration project to implement this idea. Although the idea has been endorsed by the Shanghai Municipal Government, the proposal has not been implemented in the remaining areas of Shanghai. The major issues involved in implementation are as follows:

- 1) Credibility of the time saved in the account. It would be necessary to establish a monitoring system to assure the credibility of hours that are "deposited" into each account.
- 2) Stability of the project. It would be important to convince people of the liability of the program, and that they would be able to withdraw their "time" 10 or 20 years after depositing hours.
- 3) Broad geographic coverage. This program should cover a broad area, thereby allowing people the ability to deposit and withdraw their time without geographic restriction.

5. Tax Incentives

In the U.S., there are many public and private foundations that support social service agencies. In 1995, approximately \$106.5 billion were spent on long-term care (including nursing homes and home health care) in the U.S., with 4.6% coming from private funds (National Academy on an Aging Society, 1997). In China, there is no tax incentive for individuals, business and industry to make donations to social services. Establishing a tax incentive program gives the private sector an opportunity to help finance long-term care, especially with the current lack of government funds.

Government should be a major funding source for long-term care and also be responsible for long-term care administration and policy. However, in terms of service delivery, long-term care services can not exclusively rely on government-affiliated organizations. In many developed countries, non-profit organizations play an important role in helping to deliver these types of services. China would do well to follow this example by developing and utilizing the resources of non-profit organizations.

6. Advocating Healthy Aging

Maintaining health in old age is a key to decreasing the cost of long-term care as well as the burden it places on families and the society. Many studies have concluded that a healthy lifestyle (e.g. exercise and diet, etc.) will lead to healthy aging. In China, we have a tradition of exercise as a part of healthy living. Educating elders about the benefits of healthy lifestyle and providing the necessary programs will produce a healthy generation of elders.

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