

ASSESSING TREATY PERFORMANCE IN CHINA: Trade and Human Rights. *Asia Pacific Legal Culture and Globalization*. By Pitman B. Potter. Vancouver: UBC Press, 2014. xii, 295 pp. (Tables.) US\$34.95, paper. ISBN 978-0-7748-2560-3

Potter is a prolific writer and scholar, respected among China law practitioners and academics alike. This book, providing insight into both contract law and property law, will interest even readers whose primary focus may be Chinese domestic law, rather than China's accession to international treaties. There are five substantive chapters: "China and the WTO"; "Contract Law in China"; "Property Law in China"; "Encounters with International Human Rights Standards"; and "Treaty Performance on Human Rights: Sustainability and Social Justice."

Readers unfamiliar with Potter's technical lexicon might be forgiven for equating the terms "treaty compliance" and "treaty performance." But the Introduction makes clear that he uses "treaty performance" in a specialised sense and attributes to it a meaning quite distinct from that of compliance. He argues that "performance" allows us, by introducing subjective factors of local normative standards, perceptions, conditions, selective adaptation, and institutional capacity, to gain an understanding of why compliance falls short.

The chapters on contract law and property law are comprehensive and helpful to any China Law specialist. Potter describes the influence of WTO and international contract law on the development of Chinese domestic contract law, tracing its evolution from the first Economic Contract Law applicable to Chinese parties, through the Foreign Economic Contract Law applicable to contracts involving a foreign element, to the present Unified Contract Law with universal application. The chapter on property law provides a useful review of how the concept of private property has developed since Deng's "Open Door."

The chapter on International Human Rights Standards addresses a number of topics in some depth. It is unfortunate that the author gives such short shrift to "The Judiciary," to which he allots less than one page. With respect to human rights in China there is nothing more critical than the judicial system, which is barely addressed. Chinese "courts" function as little more than low-level administration organs of the Chinese Communist Party (CCP). From arrest to execution, the entire judicial process is so fundamentally flawed that neither documentation adduced by Chinese prosecutors nor conviction in a Chinese "court" can be legitimately considered evidence of guilt against a Chinese citizen. The implications for Canadian and other western immigration officials in the handling of refugee applications are obvious.

Potter makes frequent reference to seemingly encouraging interpretations and edicts from the Chinese Supreme Court. But judges at all levels below the Supreme Court are appointed by and may be removed by local officials; the Supreme Court has little leverage over them. Supreme Court decrees are accepted by lower "courts" when they provide advantage to local interests; when counter to local interests they are rejected on the basis of "local practice," which normally takes precedence over the wording of any law.

Mention must be made of one huge "elephant in the room" as the author discusses China's "performance" of international human rights standards. For more than sixteen years, the most bestial crime against humanity since the Third Reich has steadily unfolded as tens of thousands of healthy Falun Gong practitioners have been detained in donor "herds," to be killed on demand for instant organ harvesting when their tissue and blood types have been matched to those of organ tourists shopping for transplants of hearts, livers, kidneys, corneas, lungs, or skin. Estimates of the number slaughtered in Chinese hospitals to feed the burgeoning organ "industry" range from 50,000 to well over 100,000.

The first reports a decade ago alleging the systematic murder of healthy Falun Gong practitioners, were greeted with

scepticism even from the severest critics of the CCP. Notwithstanding the CCP's murderous record of human rights abuse, claims that Chinese doctors and the entire medical establishment of China were facilitating the mass murder of prisoners of conscience, for the purpose of pillaging and selling their organs, seemed as unbelievable as science fiction. The claims were treated in the early days as the products of sensationalist journalism.

But the evidence of organ harvesting has not come from *The National Enquirer* or Fox News. The ongoing reality of this atrocity has been thoroughly documented by the solid and substantial research of David Matas, David Kilgour, Torsten Trey, and Ethan Gutmann, whose credibility and integrity are beyond question. This level of bestiality begs the question of whether we can even rationally discuss the Chinese "legal system" or China's alleged "long march to the rule of law." How can "rule of law" and human rights in China be researched, examined, and discussed with not a word about this diabolical practice, originally perpetrated against Falun Gong practitioners, but now known, as a result of Gutmann's research, to include Tibetans, Uighurs, and Christians? Even the Canadian Government, which normally turns a servile face to Beijing, has raised the issue at the United Nations and demanded that China end the practice. Yet Potter's only mention of Falun Gong persecution is a one line reference to the authorities having illegally detained Falun Gong practitioners and forced them into study classes! The mass murder of healthy prisoners for organ theft cannot be explained as a function of "local normative standards." This omission is analogous to publishing a study on the "rule of law" in Germany during the 1930s and 1940s, but forgetting to mention the Holocaust. Turning a blind eye to such an enormous issue risks rendering scholarly discussion of the Chinese legal system irrelevant.

Some readers may interpret Potter's focus on subjective factors of "local normative dynamics," "selective adaptation," "institutional capacity," etc., as an attempt to excuse or explain away China's clear treaty breaches. That would be unfortunate because the author is no apologist for the Chinese Party/State. On the contrary, his chapters on human rights contain many unvarnished references to gross human rights violations. He deserves credit for his consistent references to the "Party/State," showing awareness, not always exhibited by other scholars, that the CCP is the government and that the entire state apparatus is simply part of a fraudulent charade. But the "performance" approach at times seems to excuse non-compliance on the basis of Chinese cultural characteristics, perceptions, and institutional limitations. It is unfortunate that the relevance of the chapters on human rights is so reduced by failure to consider the human rights issues that dwarf all others in China today; Potter's solid chapters in the remainder of this book constitute a useful contribution to the scholarly literature on Chinese law.

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