

RULE OF LAW DEMOCRACIES vs. AUTHORITARIAN KLEPTOCRACIES IN EUROPE AND ASIA PACIFIC

Notes for Hon. David Kilgour, J.D.

International conference on 25th anniversary of formation of the 'Warsaw 90 Coordination Centre'

Journalists' Club

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...Congratulations to our Polish hosts. This country is today a beacon for the entire democratic/rule of law world-something that would surprise no-one who has read *No Greater Ally (2011)* by Kenneth Koskodan about your heroic role with so little recognition in WW2 . Free and fair elections since 1990, privatising some government-owned enterprises - these and other initiatives all seemed to help after a painful adjustment period. Your real economic growth has averaged nearly 4 percent a year since 2007, making your economy the EU's sixth largest economy. Most Poles seem to be living more fulfilled lives.

A friend in Canada of family origin here stressed only this week your pride and continued efforts in growing positively. "(Poland) continues to thrive in terms of their economy, research, arts, science and other aspects. While visiting some of the wonderful museums, I noticed how many groups of young children were also visiting... From the Wilanow Royal Palace in Warsaw to the Planetarium in Torun, ...even the very young ones were clearly focused on what was being said and asked questions and, it was amazing to see all these children among a mix of international and local tourists groups."

Democratic and economic reforms throughout east-central Europe proved difficult, but life for most appears to be significantly better now than in 1989. Real economic growth, for example, in the region is expected to maintain its momentum for the rest of this year and throughout 2016 above three percent.

Despite current problems, the EU, with 28 member countries and a population of 503 million and prospects for further enlargement, also continues to be a beacon for democracy, human rights, prosperity and stability for many across the world.

A Glance Back

Permit me for context to repeat two points I made to a conference on Totalitarianism and Family Life held in the Czech Republic Senate earlier this year:

1- A book published by Yale Press on family issues in Russia, Germany, Italy, Spain and Turkey during periods of totalitarianism is Paul Ginsborg's *Family Politics-Domestic Life, Devastation and Survival 1900-1950*: " Stalinist Terror came in waves with different targets... the French historian Nicolas Werth has only recently fully brought to light (that)...(b)etween August 1937 and November 1938 some 750,000 Soviet citizens were arrested as 'enemies of the people' and killed after summary trials. It was, according to Werth, 'the greatest state massacre ever perpetuated in Europe in times of peace'..."

2-A letter from a wife to her husband cited by Ginsborg, both deeply loyal to the (Communist) party, captures unintentionally the enormity of Stalin's Terror: " Sofia Antonov-Ovseyenko ... was arrested in October 1937 and wrote to her husband from a Moscow prison, unaware that he had been arrested three days earlier: 'My darling, I do not know if you will receive this, but

somehow I sense that I am writing you for the last time...Everything I know you know as well because our lives have been inseparable and harmonious...So please believe me when I say that I did nothing wrong. One more thing: it is time for Valichka (Sofia's daughter) to join the Komsomol. My arrest will no doubt stand in her way...I beg forgiveness from everyone I love for bringing them such misfortune...Forgive me, my loved one... Your Sofia'." Ginsborg continues: "Husband and wife were shot on the same day (8 Feb 1938). Sofia's daughter... aged fifteen, was not only refused entrance to the Komsomol but sent to an orphanage..."

I'll add here something well known by Poles, but perhaps forgotten by too many others today: the Katyn massacre. Approximately 22,000 Polish nationals were coldly murdered by Stalin's secret police in 1940. All of them belonged to the best-trained of your military, as well as scholars, lawyers and intellectuals. Stalin committed this crime against humanity to eliminate Polish nationalists in order to weaken the country. The movie "Katyn" by Andrzej Wajda, whose father was murdered at Katyn, was nominated for an Oscar in 2007.

Nearly a quarter century after the collapse of the Soviet Union, Europe and the world face a major new threat in Moscow. President Putin appears to operate, as the *Economist* (Feb. 14, 2014) asserted last year, under different rules "...no inviolable rules, nor universal values, not even cast-iron facts...There are only interests. His Russia has graduated from harassing ambassadors and assassinating critics to invasions."

The world should strive harder to let the Russian people know that that their country will be welcomed back into the responsible community of nations when the Kremlin treats neighbours with respect again. In the meantime, we might heed the words in 2009 from leaders in central and eastern Europe, including the late Vaclav Havel, describing Russia as 'a revisionist power pursuing a 19th-century agenda with 21st century tactics and methods'.

Ukraine

When Vladimir Putin was handed Russia's presidency by Boris Yeltsin in 2000, the country had few, if any, enemies. During the ensuing 15 years, Putin has demonized the West to the Russian people, while rebuilding the military largely with oil and gas revenues from customers in Europe. His self-created war in Crimea and eastern Ukraine was aimed at achieving control of a large swath of the country and rendering its overall transition to democracy, the rule of law, independence and ending massive kleptocracy as difficult as possible.

In an analysis in *Psychology Today*, Ian Robertson of Trinity College, Dublin, concluded: "The very worst response would be appeasement because this will simply fuel (Putin's) contempt and strengthen the justification for his position. Strong consequences have to follow from his contempt for international law and treaties." Who can disagree?

George Soros, who has done much for Ukrainians, adds, "Putin's ambition to recreate a Russian empire has unintentionally helped bring into being a new Ukraine that is opposed to Russia and seeks to become the opposite of the old Ukraine with its endemic corruption and ineffective government. ... A politically engaged civil society is the best assurance against a return of the old Ukraine."

The old Ukraine included terrible crimes against humanity by both Stalin and Krushchev. In William Taubman's 2003 book, *Krushchev-The Man and His Era*, he notes, "Stalin himself later told Winston Churchill that the 'great bulk' of ten million kulaks were 'wiped out.' Many died during the great famine of 1932-1933, a terrible man-made disaster visited on the countryside... as the result of collectivization" of agriculture. Taubman adds that Krushchev, as Stalin's viceroy in Ukraine, "presided over the purges. ... In 1938 alone, 116,119 are said to have been arrested; between 1938 and 1940 the total was 165,565. According to Molotov... Krushchev 'sent 54,000 people to the next world' ..."

Asia-Pacific

In the Asia-Pacific today, seven major nations are stable, consolidated democracies: India, Japan, South Korea, Taiwan, Australia, New Zealand, and the Philippines. Indonesia, Mongolia and others are also doing well on democratic governance, although others, including Thailand, Malaysia, Laos, Vietnam and Cambodia, clearly are not.

China

China is its people, cultures, and history far more than its unelected government. The criticisms many at home and abroad make are of the party-state governance-not, of course, the long-suffering and hardworking citizens.

A report on state capitalism in a 2012 issue of *the Economist* quoted a central bank of China estimate that, between the mid-1990s and 2008, 16,000–18,000 Chinese officials and executives of state-owned companies "made off with a total of \$123 billion (about \$6 million each)" and concluded, "By turning companies into organs of the government, state capitalism simultaneously concentrates power and corrupts it." Corruption is the system today. The astute Canadian journalist Terry Glavin recently wrote that China under Xi has "become a viciously kleptocratic police state".

Governments and business around the world, including the Cameron government in the U.K., should ponder why they are condoning the violation of universal values and rule of law in order to increase trade and investment with China. The result is usually more home jobs being outsourced and growing bilateral trade deficits. The United States alone has lost more than 20 million jobs and about 50,000 manufacturing plants-mostly to China-over the past two decades. Many foreigners who invest in China are burned badly because there is no rule of law and systemic corruption.

As consumers, should we overlook the human, social and natural environment costs paid by Chinese nationals to produce inexpensive goods? A World Bank study in 2007 concluded that pollution in China causes about 750,000 preventable deaths a year. Greenhouse gases from industrial coal burned across the country wreak environmental havoc well beyond its borders. Nearly half a billion Chinese citizens cannot access safe drinking water.

The world's democrats should continue to seek to share universal values with the Chinese people, including, the rule of law, democratic governance, transparency, and accountability. They want the same things as all of us: respect, education, safety and security, good jobs, and a healthy and sustainable natural environment.

Human Rights and Governance in China

This past summer, party-state President Xi Jinping launched an all-out attack on China's fragile human rights legal community. Since taking the Party leadership in 2013, Xi has increasingly cracked down on what he views as western-style freedoms in China. The hopes of the Chinese people and their friends around the world for gradual reform, leading to the rule of law, a sustainable natural environment, and democracy-no doubt one with very Chinese characteristics-have thus been set back.

Clive Ansley



The most recent abuses have been well documented by the respected sinologist/lawyer, Clive Ansley, who practised law in Shanghai for 14 years until 2003, when he could no longer stomach the charade of its 'legal system' and returned to Canada.

Observers outside China have difficulty understanding that 'trials' there are scripted theatres. Ansley adds: "There is a current saying amongst Chinese lawyers and judges who truly believe in the Rule of Law...: 'Those who hear the case do not make the judgment; those who make the judgment have not heard the case'.... Nothing which has transpired in the 'courtroom' has any impact on the 'judgment'." The Party operates outside and above the law as in the pre-1991 Soviet Union.

In a recent article, "Mass arrest, detention and disappearance of lawyers and other rights advocates in China", for Lawyers' Rights Watch (www.lrwc.org – lrwc@portal.ca), Ansley and Gail Davidson make many important points, but let me refer only to two:

1. "As a member of the United Nations and state party to the International Covenant on Civil and Political Rights (ICCPR), China is obligated to ensure the enjoyment by all of the rights and freedoms recognized by the Universal Declaration of Human Rights (UDHR) and guaranteed by the ICCPR, including rights to: ...presumption of innocence, determination of rights by a competent, independent and impartial tribunal, legal representation, freedom from arbitrary detention... The arrests and detentions referred to in this report...constitute a violation by China of its international human rights obligations."
2. "The courts and the judiciary are controlled by the Communist Party of China and are therefore not independent. President Xi Jin ping has publicly declared that China cannot and will not accept 'Western style' judicial independence. He has explained that this means the Communist Party of China must, and will, continue to retain control over the 'courts', the police, and procuratorate..."

Wang Yu



Wang Yu illustrates well the off-camera face of the Xi regime. Ms. Wang after spending several years in prison has become a fearless champion of the abused. In 2013, she said, “Many people think: ‘China is rich, developing quickly ...has tall buildings, wide highways, fancy cars’...They don’t know that Chinese people are like animals that don’t have any basic rights”. Wang, considered one of the most prominent lawyers arrested, is featured in the U.S. Government’s FreeThe 20# campaign (www.humanrights.gov), which draws attention to the plight of women political prisoners and others of particular concern.

Gao Zhisheng

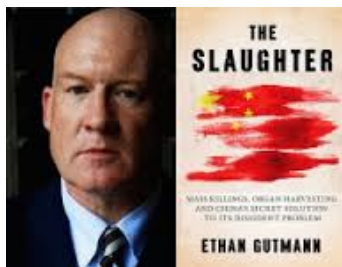
Human rights lawyer Gao Zhisheng, known by many as ‘the conscience of China’ and twice nominated for the Nobel Peace Prize, was moved in August 2014 from prison to house arrest, but could at the time barely walk or speak. On September 23, 2015, in his first interview in five years Gao told Associated Press that he was tortured with an electric baton to his face and spent three years in solitary confinement since 2010.



“Every time we emerge from the prison alive, it is a defeat for our opponents,” Gao told AP. He says he survived only from his faith in God and unwavering hope for China. Even while President Xi was visiting America, it was revealed that Gao had been re-arrested in Beijing. (<http://www.theepochtimes.com/n3/1766521-tortured-china-rights-lawyer-gao-zhisheng-speaks-out/>).

Persecution of Falun Gong, Tibetans, Uyghurs and Christians

Xi has tightened controls on religious minorities, with a government campaign to remove crosses and demolish Christian churches in an eastern province. The antipathy towards religion by the Party from 1949 until Mao’s death in 1976 is one reason for the vicious persecution millions of Falun Gong practitioners have faced across China from 1999 to today. Another was Falun Gong’s appeal across China after being introduced in 1992, partly because of its deep roots in Daoism, Confucianism, Buddhism and other historical features of Chinese culture, physical exercise and spirituality. By 1999, there were by the party-state’s own estimates more than 70 million Falun Gong practitioners across China-more than the then membership of the Party.



The 2014 book *The Slaughter* by Ethan Gutmann places the persecution of the Falun Gong, Tibetan, Uyghur, and Christian communities in context. He explains his “best estimate” that vital organs from 65,000 Falun Gong and “two to four thousand” Uyghurs, Tibetans, or Christians were pillaged in the 2000–2008 period. No one survived because all vital organs are removed to be trafficked for high prices to wealthy Chinese and “organ tourists”.

‘Crony capitalism’



Jonathan Manthorpe describes one component of ‘crony capitalism’ across China: “A local government, without a functioning system for raising tax revenue—and...riddled with corruption...sells development land to garner cash... (first getting rid of (farmers) living on the land)...the municipality has the power to instruct banks to lend the development company the money for the sale. So the local government gets its cash, the municipally-owned company gets to build a speculative residential or industrial complex, and all seems well”. Farmers continue to protest such treatment, with now well over 100,000 “mass incidents” yearly.

Joe Nocera wrote recently in the *International New York Times* that China’s “debt load today is an unfathomable \$28 trillion”. *The Financial Times* reports that a “national team” of state-owned investment funds and institutions spent about \$200 billion attempting to prop up the Shanghai stock market. Large sums continue to be removed from China by both nationals and foreigners; the regime has been spending billions daily to manipulate its currency. The highest echelons of the Party have amassed unimaginable wealth. Bloomberg reported in 2012 that President Xi Jinping’s family is “worth” several hundred million dollars.

In short, the ‘crony capitalism/Maoist governance/beggar thy neighbour’ model is currently experiencing severe strains. The Tianjin explosions and tragedy this summer and their opaque handling before, during and afterwards also reflect a profound and growing discord between the Party and people.

David Shambaugh



There are hopeful signs among the distressing news coming from China. David Shambaugh, named one of America’s top 20 China watchers by the China Foreign Affairs University (affiliated with its ministry of foreign affairs), is now convinced that we are witnessing the “endgame of Chinese communist rule.” He wrote:

- *In 2014, Shanghai’s Hurun Research Institute... found that 64% of the ‘high net worth individuals’ whom it polled—393 millionaires and billionaires—were either emigrating or planning to do so. Rich Chinese are sending their children to study abroad in record numbers...*
- *... since taking office in 2012, Xi has greatly intensified the political repression that has blanketed China since 2009. The targets include the press, social media, film, arts and literature, religious groups, the Internet, intellectuals, Tibetans and Uyghurs, dissidents, lawyers, NGOs, university students and textbooks...*
- *(Corruption) is stubbornly rooted in the single-party system, patron-client networks, an economy utterly lacking in transparency, a state-controlled media and the absence of the rule of law...Xi, a child of China’s first-generation revolutionary elites, is one of the party’s ‘princelings’, and his political ties largely extend to other princelings. This silver-spoon generation is widely reviled in Chinese society at large”.*

Better Governance

Among China's neighbours, as noted earlier, are stable, consolidated democracies and other nations becoming so. It is self-serving sophistry to claim, as apologists for the Xi regime do, that democracy and universal values do not work well for Asians. Since the end of the First World War, multiparty democratic governance has been adopted throughout much of the world, albeit with periodic setbacks, as the best means of creating improved lives for all citizens.

Like the rest of the world, many Chinese nationals are aware that this year's Nobel Peace Prize went to the Tunisian Dialogue Quartet—four groups who played key roles in Tunisia's effort to build a pluralistic democracy. Meanwhile, Liu Xiaobo, China's Nobel Peace Prize winner in 2010 for "his long and non-violent struggle for fundamental human rights in China", remains in the gulag for advocating democratic governance for China, while his seriously ill wife, Liu Xia, remains under house arrest for the "crime" of being married to Lui.



The world-renowned Beijing artist/democrat Ai Weiwei's comments in late 2013 seem especially timely at this conference:

"...Because the Chinese government refuses to face elections, the public has never had a chance to express its opinion about the leadership... The Communist Party is ethically and philosophically too weak to meet any challenge in public discussion. Over the coming years, the Communist government will finally... realize that it can only continue to govern if supported by the constitution and true rule of law... (I) f it continues to reject any public role in its decision making and hopes to distract Chinese with spectacles ... the regime will only hasten its own end..."

Thank you.

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