



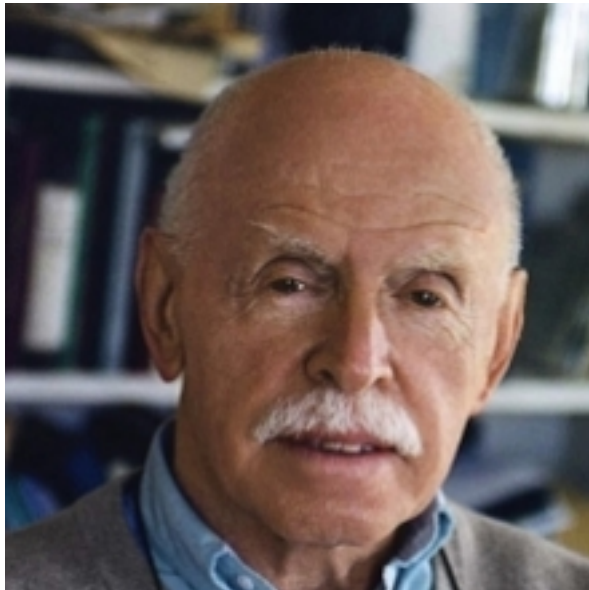
Courtesy of Jerome Cohen

Cohen and Zhou Enlai, 1972

The Missionary Spirit Dies Hard

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My First Trip to China



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I started studying the Chinese language August 15, 1960 at 9 am. Confucius said “Establish yourself at thirty,” and, having just celebrated my thirtieth birthday, I decided he was right. I would not be allowed to visit China, however, until May 20, 1972. For almost twelve years my study of China’s legal system and related political, economic, social and historical aspects, had necessarily been second-hand, dated and from afar. It was a bit like researching imperial Roman law or deciphering developments on the moon.

Like many other American specialists on China, as a new era of Sino-American relations dawned in the early 1970s, I tried many ways to finally reach the Promised Land. The one in which I had invested the least effort was the one that panned out first. A phone call from the Federation of American Scientists, a group of liberal scientists seeking to initiate cooperation with China, suddenly brought an invitation to accompany its chairman, the distinguished physicist and policy advisor Marvin Goldberger, and its executive secretary, the dynamic political activist Jeremy Stone, on a several week-trip to promote the first scientific exchanges between our countries. The three of us were allowed to take our wives, but not our children.

So Joan Lebold Cohen, who had become a specialist in Chinese art on the faculty of the School of the Boston Museum of Fine Arts/Tufts University, and I shared this first trip to China just three months after President Richard Nixon’s famous China visit. We had been spending the academic year in Japan on my Guggenheim Fellowship, and we reluctantly left our three school-age sons in Kyoto under the supervision of our kind and competent housekeeper, Hatenaka-san.

Initiating Cultural Exchange

We were guests of the Chinese Academy of Sciences. One of its able staff, Mr. Li Mingde, met us at the Hong Kong border and escorted us to Beijing's Minzu (Nationalities) Hotel. Excited to finally be there, I awoke early the next morning and decided to explore the neighborhood before joining my wife and colleagues for breakfast. The area was bustling with people rushing to work, leaving no chance to strike up a casual conversation. I tried to talk with people in the nearby market, which would have been difficult at any time, but especially at 6 am. I heard one vegetable-seller say to another: "He's a Frenchman," perhaps because Americans were few at that point and I had a mustache. After a while, since I was hungry and getting nowhere in my marketplace effort at cultural exchange, I decided to try my luck at a nearby "little eating place." As I stood in line, the man behind the counter seemed friendly and asked what I wanted to eat. I asked him to give me what those ahead of me were having—hot soymilk soup called "doujiang" and a long cruller called "youtiao." Armed with these props, I took the fourth seat at a table for four occupied by three middle-aged workers. Everyone else in the room was watching but my new companions barely looked up. I was determined to get them to talk, but how to start? I remembered that foreign journalists who preceded me in China had told me that, every time they asked anyone about the mysterious fate of disappeared leader Lin Biao, the answer was always: "Have some more soup." So, instead of explaining who I was and how I got there or reminding my companions about Chairman Mao's emphasis on being at one with the masses, I stayed with what seemed a safe topic and said to the fellow on my left: "What's the name of this soup?" He didn't answer.

The room hushed, and tension began to mount, but I pushed on, saying hopefully to the man across from me: "Do you know the name of this soup?" He wouldn't answer either. At that point, as the sympathetic man behind the counter looked unhappy at the cool reception I was receiving, I noted a sign on the wall that said: "Heighten revolutionary vigilance. Defend the Motherland against spies." And standing in a corner staring at me with bulging eyes was a man who resembled a security officer about to make an arrest in a Jiang Qing opera. Meanwhile, the anxious man seated on my right was slurping his soup furiously in an effort to clear out and avoid the inevitable. He probably didn't want to be impolite like the others, but may have feared that, if he told me the name of the soup, the next question would be "What happened to Lin Biao?" In some desperation I persisted and said to him: "You must know the name of this soup." He looked at me and then at the

soup and said what Chinese often say when they don't want to answer: "I'm not too clear about that!" At that point, hoping that the official route to cultural exchange might be more successful, I decided it was time to return to the hotel!

On that first full day in Beijing, I underwent an unexpected name change. For twelve years my Chinese name had been "Kong Jierong." My first Chinese language tutor in Berkeley, California, a learned former Beijing scholar, had given me this name. "Kong," he had said, was the perfect family name for me since it sounded like Cohen and was the name of China's most famous sage, Confucius, who took a great interest in law. But in the China of mid-1972 Kong had become the enemy, the hated symbol of China's feudal past, and anathema to every upstanding revolutionary. I had inadvertently arrived in the midst of a nationwide campaign to wipe out the remnants of Lin Biao and Confucius. So my hosts declared that I should have a new, more proletarian name. They decided that "Ke En" would do nicely since "Ke" was an ordinary name of the masses and, together with "En" (they knew I admired Zhou Enlai), would sound even more like Cohen than "Kong" did and have a favorable meaning. I gave the matter little thought, but later, in 1977, when I escorted Senator Edward M. Kennedy and ten members of his family to China to meet Deng Xiaoping and other luminaries, Taiwan's newspaper the *Lianhe Bao* used my new Mainland name against me, claiming that I had abandoned the name of China's foremost figure. Of course, outside the Mainland, I have continued to be known by my original name, and recently, since the resurrection of Confucius in China, some Mainland organizations and friends have adopted it in referring to me.

We spent our first ten days in Beijing, preoccupied with the usual introductory tourist sites and meetings devoted to persuading our hosts to send their first science delegation to the United States, which they did six months later. For me, two personal academic/professional meetings stand out. One was a four-hour chat with three members of the Legal Department of the China Council for the Promotion of International Trade (CCPIT). It was my only contact during the entire visit with people concerned with law. The domestic legal system had been a shambles and arbitrary even before the Cultural Revolution, and the revolution still had four more years to run when we appeared. Legal education had virtually ceased. Although the worst days of violence had long passed by 1972, struggles reportedly still occasionally took place in cities that were closed to foreigners. Yet China's international trade

was expanding, raising legal problems that had to be handled, and business with the United States was gradually opening. So when I asked to meet legal experts, my hosts naturally turned to the CCPIT's Legal Department. The three people introduced, although they lacked formal legal education, seemed to be experienced, competent people, and I was destined to see much more of them when, beginning 1978, China launched a serious effort to establish a credible legal system. The director of the department, Mr. Ren Jianxin, in the late 1980s became not only President of the Supreme People's Court but also, concurrently, head of the Communist Party's Central Political-Legal Commission, which controls the activities of all the country's government institutions for implementing the law. Mr. Tang Houzhi became China's best-known expert on international commercial arbitration, and Mr. Liu Gushu the leading specialist on patent and trademark matters and founder of an important law firm dealing with these problems.

The other meeting I well recall was with a large group of "America watchers" convened by the Foreign Affairs Association (*waijiao xiehui*), an offshoot of the Ministry of Foreign Affairs. They were familiar with my July 1971 article in the American journal *Foreign Affairs* calling for U.S. recognition of the People's Republic and disengagement from the Republic of China on Taiwan. At least a few knew that I had chaired a Harvard-MIT committee that in November 1968 gave President-elect Nixon a confidential memorandum recommending that he send a close aide for secret talks in Beijing with China's leaders. That was the origin of Henry Kissinger's famous 1971 visit. Of course, my hosts, the "America watchers," wanted to discuss the problem of Taiwan and prospects for normalization of diplomatic relations between our countries, but they seemed most anxious about Senator George McGovern's chances of unseating Nixon in the fall presidential election. I was known to be an advisor on Asia to McGovern, although, since I had spent most of the year abroad, I did little for his campaign. At a time when China was looking to the U.S. to be a shield against the Soviet Union, McGovern's pledge to cut the defense budget by one-third seemed very worrisome to my hosts. Also, it was obvious that the PRC had high hopes for cooperation with the Nixon administration, much of it based on the admiration that Kissinger and Zhou Enlai professed for each other.

I had agreed to talk with the group about these subjects if they would agree to also discuss problems of cultural exchange. I wanted an opportunity to let them know how this initial effort looked to their guests. Since they hoped to

establish diplomatic relations with the U.S., I thought it useful for them to make their reception of Americans as smooth as possible. I especially wanted to ask about the most puzzling of our experiences—the subway, an experience that reminded me of the old jokes about the then new Moscow subway of the 1930s. When our escort inquired whether we would like to ride on the Beijing subway that had been under construction, I said that the newspapers had reported that it was not yet in service. Our escort said that it was already in service and that we could ride on it. At the appointed hour, while standing next to the track, we were given a long lecture about the history of the subway's development. During that time, only two trains came by, and neither had a single passenger. The next train, which we took through eight stations, also had no other passengers, nor did we see any people waiting at any of the stations. We were told they were all in waiting rooms, where conditions were more comfortable. When we got to the last stop, the Beijing railroad station, our escort still insisted that the system was in use. I embarrassed my wife by saying that we would like to wait a while for evidence that people really were using the subway. I had had doubts about some of the information we had been given on other matters and was disturbed that we could not successfully communicate about something as basic as whether the subway was in service. A bit exasperated with my determination to clarify an evident misunderstanding, my wife and a couple of others in our group went up the escalator to the main hall to wait. Down at the track, no trains came in for a time but finally one did appear with about twenty assorted workers, peasants and soldiers who seemed flustered when they encountered the escalator. With some satisfaction, our escort said: "You see, the system is in service." When I later asked the Foreign Affairs Association group about this mystery, our escort's leader, with the escort seated next to him, smiled and said: "It's very simple. Our subway is not yet in service."

Our escort had given me a more reliable insight into contemporary China earlier in the trip, as we viewed the beautiful valley of the Ming Dynasty tombs outside Beijing from a hilltop. By that time I felt we had become friendly enough to talk politics and even international law. Just a few weeks earlier, at a lecture in Tokyo to the Harvard Club of Japan, I had discussed the increasingly tense dispute between China and Japan over the eight piles of rock in the East China Sea known as Diaoyutai in Chinese. When on May 15, 1972, the United States surrendered administrative jurisdiction over these islets to Japan, Sino-Japanese relations deteriorated further, and even today the dispute continues to fester. When I mentioned Diaoyutai, my escort

became uncharacteristically emotional. “China,” he said, “will never allow the Japanese aggressors to occupy one inch of its sacred soil. We will fight them to the death.” But when I gently informed him that Japan had assumed jurisdiction over the islets only the previous week, he suddenly resumed his usual relaxed manner and said: “Oh, well. There is a right time and place for everything. We are in no hurry. We can settle this matter any time in the next 500 years!” I had witnessed the two sides of contemporary China’s politics—nationalism and pragmatism—in short compass.

One question that overhung our first ten days was where we would go next. My wife wanted very much for us to visit the ancient capitals of Xi’an and Luoyang and their nearby artistic treasures. For days we waited for confirmation of this excursion. Finally, after dinner on our last night in Beijing, our escort came to our room and told us that it would not be possible. After he left, Joan expressed her anger at their rejection of her only request. I agreed with her view, while motioning to her to raise the volume of our continuing conversation about our disappointment. I assumed that our hosts might be monitoring our conversation and may well have been right. The next morning, just twelve hours later, our escort returned to tell us the exciting news that we could go to Xi’an and Luoyang. Moreover, at the farewell lunch that the famous poet-official Guo Moruo, then head of the Chinese Academy of Sciences, gave us that day, Guo, unprompted by us, said to me: “I understand that your wife is interested in ancient Chinese culture. So we will arrange for you to go to Xi’an and Luoyang!” That incident taught me a lot about the importance of using imaginative negotiating techniques in China.

Meeting Premier Zhou Enlai

One other question concerned us in Beijing—whether we would meet Prime Minister Zhou Enlai. We were told that we might, but there was no word by the time we left the capital. Nor was there any information as we pursued the rest of our itinerary. Our travels proved pleasant and stimulating but plagued by the continuing “cat and mouse” games played by our local hosts to parry my efforts to learn basic facts about public life. An exchange in Shanghai conveys the flavor. I asked: “What are the names of your Shanghai newspapers?” “We have the *People’s Daily*,” I was told. I responded: “But that’s your national newspaper. What are the names of your local papers?” Our host replied: “You wouldn’t be interested.” I answered: “Then why do you think I asked the question?”

We ended our travels by returning to Beijing in order to fly to Guangzhou on our way out of China. Our hosts seemed slightly embarrassed that there had been no confirmation of a meeting with Premier Zhou. Then, while en route, bad weather in Guangzhou required our flight to be diverted to the closed city of Nanchang, capital of Jiangxi Province. Because Nanchang was closed, we were kept at its airport until dark and then taken to the People's Hotel, which we were forbidden to leave. At 4 a.m., we were awakened to return to the airport before daylight to resume our flight to Guangzhou. In the interim, however, big news came from Beijing.

At 1 a.m., as we were fitfully sleeping amid blistering heat on our woven bamboo mats, there was a knock on our door. It was a telephone call from Professor Lin Daguang, a Canadian friend who had previously been an assistant to Premier Zhou. Would Joan and I be willing to return to Beijing to meet Zhou? I said I would gladly return and would let him know about Joan. I also suggested inviting our companions on the trip, which he arranged. Joan, understandably, felt she had to return to Kyoto to look after our sons. The Goldbergers also had to go home, but the Stones were able to return to Beijing.

As Harrison Salisbury later commented in his book *To Peking and Beyond*, invitations to meet Premier Zhou were often issued at the last minute, and it was not unusual to bring guests back from all over the country. There was also sometimes an air of mystery surrounding these meetings. For example, I was told to wait in my hotel room from 5 p.m., after which I would be picked up and taken to a preliminary meeting with an unidentified person, to be followed by dinner with an unidentified group, but with a strong hint that Premier Zhou would be the host. The preliminary meeting turned out to be a private one-hour session with Deputy Foreign Minister Qiao Guanhua, a stimulating and self-confident interlocutor whom I enjoyed. I then went to dinner and met with Premier Zhou, Qiao and some of their principal aides, at least two of whom eventually became ambassadors to the U.S. and heads of the North American section of the Foreign Ministry. Our interpreter was Tang Wensheng, known to many Americans as Nancy Tang, who had grown up in the United States while her father served at the UN. Although I had several short chats in Chinese with Premier Zhou, Nancy did the heavy interpreting for the evening. The main guests were Professor John K. Fairbank, America's senior China scholar, and his charming wife Wilma. Fairbank was my senior colleague at Harvard University, where I was then teaching in the Law School.

The Fairbanks had been friendly with Premier Zhou in Chongqing during the mid-1940s before the Communist Party's 1949 victory in the Chinese civil war. Foreign correspondents Harrison Salisbury of the *New York Times* and Richard Dudman of the *St. Louis Post-Dispatch*, and their wives also attended, as did Jeremy Stone and his wife.

Salisbury's book gives a long account of most of the conversation at our almost four-hour evening with Zhou and this group. I need not repeat it, although it was surely the high point of my first visit. Here I will mention only my most outstanding impressions. The deepest impression was left by Premier Zhou. He gave us an hour of discussion sipping tea before dinner while seated in a circle. He was genial, informal, relaxed, humorous, yet serious and always guiding the conversation by asking questions. His first remark to me was: "Why didn't your wife come with you? We invited her." When I explained that Joan had wanted to join but was concerned about our sons, he quipped: "Oh, I forgot. In America, parents still have to look after children." Later, as we went into dinner, he said to me with a smile and a bemused twinkle in his eyes: "I understand that you have done many books on our legal system." This showed the respect he gave his guests by learning their backgrounds in advance. Yet he said it in a slightly quizzical way that gently implied that perhaps I had made more of China's legal system than China had. After all, the country was then still in its Cultural Revolution!

What I remember most vividly from the pre-dinner conversation was the Premier's preoccupation with cancer. Zhou knew, of course, that the purpose of Mr. Stone's and my visit was to initiate cultural exchanges in the sciences. He seemed especially interested in inviting to China America's leading cancer specialists, in theory and practice. Since the Premier appeared so lively and healthy, it didn't dawn on me that he might be inquiring on his own behalf. I did think that he might be asking on behalf of Chairman Mao Zedong, whose health had reportedly been deteriorating and was the subject of much speculation at home and abroad, and soon after our meeting I wrote about this in an op-ed in the *Washington Post*. We later discovered that Premier Zhou had learned in 1972, the year of our visit, that he himself was suffering from several kinds of cancer, which ultimately caused his death in January 1976, eight months before the demise of the Chairman.

Broader cultural exchange was one of our dinner talk's main themes. Since Professor Fairbank sat on Zhou's right and I on his left, we were in a particularly good position to urge him to allow Chinese to visit and study at

Harvard. Zhou deflected our efforts as well-meaning but premature. He seemed to think that brief visits could soon be arranged but that study might better await the establishment of formal diplomatic relations between our countries. He appeared especially worried that Chinese students might have unpleasant encounters with students sent to America by the Guomindang government in Taiwan. He even asked me, as an international lawyer: “If our students debated on the same Harvard platform with students from Taiwan, wouldn’t that be implicit recognition of a ‘two China’ policy and signal Beijing’s acceptance of the legitimacy of the Chiang Kai-shek regime?” I assured him that academic debate among students had no necessary international law implications. At that point, about an hour into dinner, perhaps to ease the pressure from Harvard, the Premier suggested that we take a five-minute break. In the men’s room, as we stood at our respective urinals, Professor Fairbank, indicating that perhaps we had put too much pressure on the Premier, looked me in the eye somewhat sheepishly and said: “The missionary spirit dies hard!”

I had wanted to make one serious suggestion about international law to the Premier and his colleagues and waited most of the evening till an opportunity presented itself. I said that, having already entered the United Nations the previous October, China should move quickly to take part in all UN institutions, including the International Court of Justice (ICJ). That gave the Chinese officials their biggest laugh of the evening. They thought I must have been joking. Why, after all, would a revolutionary communist government want to participate in a bourgeois legal institution where its views of international law would not be accepted and it was sure to be outvoted? I explained that the world was entering a new era and China, having recently been acknowledged as a great power by being awarded a permanent seat on the UN Security Council, should obviously want to play a role in the application of international law by the ICJ. The People’s Republic did not nominate its first judge to sit on the ICJ until 1984. Although Chinese judges have played a constructive role in the Court’s work ever since, their government has only gradually expanded its confidence in the ICJ’s deliberations.

Concluding the Visit

After the memorable evening with Zhou Enlai, anything else that occurred in my first trip was inevitably anti-climactic. Yet the exchange of ideas at the dinner with Zhou encouraged me to offer one more suggestion on a very

sensitive topic before leaving Beijing. We were meeting the next morning with Professor Zhou Peiyuan, then Chairman of the Revolutionary Committee of Peking University, or, as he preferred to put it to us, president of that illustrious university. Zhou Peiyuan, a University of Chicago Ph.D. in physics and a former Cal Tech professor, had already spent a great deal of time accompanying us as the senior person responsible for our visit. His mission was presumably to get acquainted with and hear the views of his fellow physicist and sometime U.S. government advisor, Professor Marvin Goldberger, the leader of our small delegation.

I wanted to express my concern for my friend and college classmate, John T. Downey, Jr., who had been detained in Chinese prison since November 1952 after his plane had been shot down over China on a CIA mission to foster armed resistance against the then still new Communist government. I had been trying for many years to obtain his release and had previously suggested to both the Chinese Ambassador to Canada (later Foreign Minister) Huang Hua and Henry Kissinger that this could be accomplished, to the satisfaction of both countries, if the U.S. would finally acknowledge the truth of China's accusations that this had been a CIA incursion. I had also revealed the truth of the Downey matter in nationally-televised testimony before the Senate Foreign Relations Committee in June 1971 and in a *New York Times* op-ed. I did not want to leave Beijing without again urging consideration of this idea, and I took the meeting with Professor Zhou as the best opportunity. Early the following year, six weeks after President Nixon discreetly conceded the truth of the charges against Downey in a press conference, Downey was finally released.

It turned out that Professor Zhou had an even more sensitive topic to raise with us, even in Professor Goldberger's absence. He surprised Jeremy Stone, a knowledgeable Washington defense expert, and me by asking what we could tell him about the so-called "smart bomb" that the U.S. had reportedly begun to use in the Vietnam war. I, of course, knew nothing about this subject and didn't know whether Stone was informed. In any event, we told Zhou that if anyone in our group could answer the question it would be Professor Goldberger, who had already returned to the U.S. I'll admit that I was a bit naive in feeling shocked at what seemed a blatant effort to turn cultural exchange into an intelligence operation.

Overall, Joan and I found our first trip to China enormously stimulating despite the evident limitations on cultural exchanges in both law and art. I felt

that my research, and especially the year 1963-4 that I had spent in Hong Kong interviewing Chinese refugees many of whom were former officials, had well-prepared me for the visit. Every experience left me with vivid images. Joan, a professional photographer as well as art historian, was more struck by the drabness and austerity of contemporary life and the absence of amenities. After returning to Japan, we took our boys to see Charlton Heston and Ava Gardner in *55 Days at Peking*, a colorful film depicting the imperialist heyday of the Boxer Rebellion, which by coincidence was playing in Kyoto. As we left the theater, Joan said: "That's the China of my dreams."

Nevertheless, we both agreed with the humorist Art Buchwald that, after a stomach-full of China watching, an hour later you're hungry for more!

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