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Ethical Dilemmas of the China Scholar

A conversation about staying engaged, managing risk, and speaking the truth

During our annual Timothy A. Gelatt Dialogue on the Rule of Law in East Asia on March 25, 2021, our panelists engaged in a wide-ranging and nuanced discussion of the complex ethical challenges that they have encountered when teaching and researching about China in recent years. Because of the conversation's deep connection to the mission of the U.S.-Asia Law Institute, we are providing a partial transcript here in addition to making available the full video recording. The speakers' remarks have been edited lightly for clarity.

The premise of the discussion was that China's authoritarian turn and recent events in Hong Kong and Xinjiang have intensified long-standing challenges related to academic freedom in the China field. The pandemic has added a new dimension as classroom lectures and other discussions on digital platforms are easily recorded, prompting concerns that remarks may be shared beyond the classroom and taken out of context. Many PRC students at Western universities have been attending classes remotely from inside China's firewall, raising concerns about surveillance and censorship. China scholars are faced with a never-ending series of decisions that could have important implications for their own careers and those of their students.

Moderator:

Andrew J. Nathan, Class of 1919 Professor of Political Science at Columbia University.

Panelists:

Benjamin L. Liebman, the Robert L. Lieff Professor of Law and director of the Hong Yen Chang Center for Chinese Legal Studies at Columbia Law School.

Eva Pils, professor of law at King's College London and an affiliated scholar at the U.S.-Asia Law Institute of New York University Law School.

Dr. Teng Biao, a human-rights lawyer and Grove Human Rights Scholar at Hunter College, the City University of New York.

Rory Truex, assistant professor of politics and international affairs at Princeton University.

Hosts:

Jerome Cohen, co-founder, director emeritus of the U.S.-Asia Law Institute

Katherine Wilhelm, executive director of the U.S.-Asia Law Institute

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Andrew Nathan: This panel is part of an annual event that honors Tim Gelatt, who was a beloved student and colleague of Jerry Cohen. He studied with Jerry at Harvard Law School, worked with Jerry, and was an extremely promising China

scholar and specialist in Chinese law. Tim had many friends in China and Taiwan and in the United States and elsewhere. He tragically passed away at the young age of 39. The NYU U.S.-Asia Law Institute has annually held a conference in his honor. All of us are very pleased to be here to honor him.

Ethical dilemmas are not a new thing in the study of China, or in any kind of international study. There's the broad dilemma between telling harsh truths versus understanding the other side's point of view. The PRC government certainly cares a tremendous amount about what is said about it internationally and has always wanted to influence that. One might think about, for example, Edgar Snow's book, *Red Star Over China,* based on his interview with Mao [Zedong]. I don't know if he experienced it as an ethical dilemma, but he faced the trade-off between telling Mao's story as Mao wanted it to be told versus telling it critically.

It seems to me that ethical dilemmas are always trade-offs between two good things. Snow made that choice. More recently, one might think about, for example, Roxane Witke's book called *Comrade Chiang Ch'ing.* Roxane was vouchsafed some long interviews with Jiang Qing and came back to the United States to write Jiang's story. The Chinese government immediately started putting various kinds of positive and negative pressure on her to not write that book, but she went ahead and wrote the story, and it was Jiang Qing's story as Jiang Qing wanted it to be written.

One may think about the first wave of journalists who went to China after U.S.-China normalization, and started to do a lot of interviews and publish books. In doing so, some of them got some of their informants into trouble. Those informants got arrested. So do you take the story and tell it, or do you try to protect the informant?

Then there has been the dilemma of seeking the release of Chinese political prisoners like Wei Jingsheng, for example, in exchange for their being exiled. One of our panelists, Teng Biao, is an example of that kind of situation. We are delighted to have him here, but we sort of did the work of the Chinese regime by affording asylum to a lot of people who are no longer able to go back to China.

But things are different now because the Chinese government has a lot more clout, more ways to punish people and more ways to incentivize people than in the past. So the ethical problems of being a China scholar are sharper and more constant than ever before.

Let me briefly introduce the panelists in the order in which they will speak. The first is Rory Truex, an assistant professor of politics and international affairs at Princeton University. He's been a leader in the process of thinking through some of these issues, particularly with respect to how we teach the subject. I admire his leadership and his thinking about how to be not only a very good social scientist but about the ethical issues.

Then we're going to hear from Teng Biao, who was a leading human rights lawyer and law professor in China, who co-founded the Open Constitution Initiative with Xu Zhiyong and China Against the Death Penalty Initiative, and was one of the leaders in signing Charter 08, and did many, many things that got him into trouble in China. So he is now in the United States. He is the Grove Human Rights Scholar at Hunter College of the City University of New York.

Then we're going to hear from Eva Pils, a professor of law at King's College London and just the most thoughtful and productive scholar of human rights, the rights defenders movement

in China, and human rights issues in China, and a very deep thinker about legal and ethical issues and the interaction between law and ethics.

Finally, my colleague Ben Liebman, who is at the Columbia Law School. He is the Lieff Professor of Law, director of the Hong Yen Chang Center for Chinese Legal Studies and, I just discovered as well that you are the director of the Parker School of Foreign and Comparative Law. So he's a busy guy and he has a very active research agenda as well.

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We need to manage the risks but also have the courage to continue to teach China the way it should be taught.

Rory Truex: I have been working with a group of other scholars – Dimitar Gueorguiev at Syracuse, Xiaobo Lü at UT Austin, Kerry Ratigan at Amherst, and Meg Rithmire at Harvard Business School – to try to think through some of the key ethical questions and how we might manage them as a scholarly community. … [I]magine you're teaching a course on Chinese politics. That course covers sensitive material, including things like what's going on in Xinjiang or the Tiananmen Square Massacre. Because of remote learning and COVID you have students who are taking your course all over the world, which means you're being asked to record your course. You have students who are Chinese citizens who would like to take your course and some of them are residing in mainland China. The material that you're teaching is formally banned in China, where it would be inaccessible in China without the use of a VPN. Your university VPN is, at best, unreliable.

The last year, year and a half has been a perfect storm for China teaching because of three trends. The first is the move to online teaching. We have no way of knowing if someone is watching or someone's recording what we're saying. There's always a degree of concern about this, so if you were teaching live in a big lecture hall, you know there's always a concern that someone could come in and surreptitiously record what you're doing. But to be on camera all the time is a new thing. It's no small thing that the entire China studies community is now being recorded all the time, speaking about the Chinese government.

The second feature of this is the fact that remote learning means that some of our students are residing in the PRC as they take our courses.

The third element [is] the new National Security Law passed this summer, which is vague in its language and contains provisions, namely Article 38, which imply extraterritoriality and could potentially be used to criminalize speech outside of China. To date it does not appear that that piece of law is being used to target foreign scholars and activities in the classroom but this goes back to Perry Link's idea of the "anaconda in the chandelier"— there's always this looming threat that this type of legal mechanism could be used.

So the question is: given all of these trends, what do we do? Should this change how we teach China? How do we manage some of these problems? I was able to work with a large number of scholars in trying to come up with some basic principles but there's no easy answer. There's no one right answer and I think every professor and scholar needs to come up with a set of actions that they feel comfortable with.

The overarching takeaway from working with that group this summer was, I think, as a community, we need to pay more attention to security risks than we used to. We also need to

abide by a general commitment not to change our content. People often use the word self-censor, which I think Ben and others have said is sort of a problematic word because in some sense it's a victim-blaming word. The way I think of it is, we shouldn't be changing the content of our courses. If we, all of a sudden, because of being afraid, stop teaching about Tiananmen or the Great Leap Forward or Xinjiang in Western classrooms and we're presenting a sanitized version of Chinese history and the Chinese political system, that's deeply, deeply problematic. So we need to manage the risks but also have the courage to continue to teach China the way it should be taught.

In terms of how to manage risks, the principles that I think make sense, the first is "informed choice." Namely, treating students as adults, which they are, and providing them information about the risks posed by online education and the study of China. And part of that providing information is also being clear about what we don't know. We don't really know how the National Security Law is going to be implemented. We have no indication to believe that it's going to be used to target undergraduates or anything like that, but we need to be clear about what we know and what we don't know and where the risks are. I think we would probably all agree that there is a hierarchy of risks and, in particular it's Chinese citizens who are at greatest risk, especially those who are residing in China.

The second principle, I think, is that we need to be protecting students as much as we can and coming up with creative solutions to do so. I've implemented blind grading for the first time, which is actually a best practice. This was sensationalized in some media coverage. The headline was, "Princeton professor using code names because of fear of Chinese government." We are having students not put their names on papers, which is actually a best practice because it prevents racism and sexism and other implicit biases from entering into the grading process. But it also does give students a degree of protection. When they're writing an essay they don't formally put their name on it. They're turning it in through a secure platform.

I've also been an advocate of discouraging students from the PRC from taking my course this spring. And that might be a little more controversial. I have not banned anybody from taking it but I've discouraged them and try to work with students to come up with an alternative plan, which might include an independent study, or it might include taking the course next year when they're able to get back to campus.

I would say that a particularly vulnerable population is our teaching assistants, who are graduate students. Many of our graduate students are Chinese. And so, trying to be open and honest with them about what they're comfortable with and coming up with solutions to allow them to be effective and safe in the classroom. So, for example, not requiring them to ever be on camera. Not requiring them to lecture; not requiring them to potentially even teach certain subjects if they're uncomfortable. . . .

The final thing I would say is there's a counter-risk here, which is that we create an environment of fear. It's important to be upfront about the risks, but we also don't want to create an environment where students are unwilling to take our courses or other faculty members who aren't China experts are unwilling to say the word "China" in their course because they're nervous, or people

are sitting in a seminar and unwilling to speak because they're scared.

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In some contexts, self-censorship is totally acceptable, understandable, or even necessary. In other contexts, self-censorship is unnecessary.

Teng Biao: I'm going to talk a little bit about self-censorship from my experience as a human rights lawyer and scholar in China, and also my experience of teaching human rights and law in the United States. When I taught at a university in Beijing, I didn't censor myself very much. I was one of the very few Chinese scholars in China who dared to discuss the extremely sensitive issues like Tiananmen massacre, Falun Gong, religious persecutions, Tibetans, Uyghurs, etc. I guess in China, no more than 20 scholars could touch these topics. That's totally understandable. Scholars like me are easily banned from teaching or even fired by the college. I wrote a lot of articles critical of the Chinese Communist Party and the political system, and I actively participated in the human rights movement and dissident activities. Because of this, I never got promotion. I was banned from teaching a few times and eventually fired. My passport was confiscated and I was even kidnapped, detained, and tortured by the Chinese secret police. There are lesser sensitive topics like the death penalty, forced eviction, torture, one-child policy, black jails, corruption, etc. Normally it's okay to talk about these things in the classroom in China, but in practice, still not many teachers are willing to discuss these issues. If they have to, they will be very careful not to distance themselves too much from the official narrative.

The Chinese government has many forbidden zones,学术禁区. Anyone will be punished if they publicly express different opinions from the official ideology. But the border of forbidden zones is not clear and not fixed. Some forbidden topics are explicit, many are not. The list of sensitive issues is always expanding and changing. The government's red line keeps constantly changing and is relatively vague in order to maximize its intimidation. In an authoritarian or totalitarian system like China, totally avoiding self-censorship is not possible.

So scholars have to calculate how far to go, how explicit to be, with whom to ally, and so on. If anyone calculates incorrectly, he or she can lose a job, be imprisoned, or even worse. But most censorship doesn't directly involve these things. It involves the fear of these happening. Rory mentioned Perry Link's famous metaphor, an "anaconda in the chandelier." The silence of the anaconda crouching overhead means "big brother is watching you." And then everyone will automatically make a big or small adjustment. Eventually you get used to the fear, and accept it as part of the natural landscape.

In some contexts, self-censorship is totally acceptable, understandable, or even necessary. When a research or speech may put a third person – for example, the Chinese partners, co-authors, the interviewees, the students – in great danger, self-censorship would be necessary and that's totally not in conflict with any moral principles.

In other contexts, self-censorship is unnecessary. The scholars exaggerate the potential consequences too much. They may give up any critical opinions on the issues that are not very sensitive. They thought an article may cost their job, but it turned out nothing happened.

A few years ago the American Bar Association invited me to write a book, but after I signed the agreement, they rescinded the proposal, and they said that to publish my book would endanger their programs in China. What frequently happens is that scholars over-imagine the terrible consequences to justify their censorship. … People imagine a lawsuit, a kidnapping or imprisonment. So many scholars have too easily given up their research or canceled a talk or twisted their wording.

The Chinese government uses visa denial as an effective tool to manipulate and suppress international academics. This is one of the main reasons for rampant self-censorship among China scholars. Our moderator, Professor Andy Nathan, Perry Link … a few years ago, the 14 authors of a book, *Xinjiang: China's Muslim Borderland*, were all banned from entering China. The suffering of visa denial is often higher than it seems to be – longtime training and language study, building connections and networks in China, the necessity of fieldwork, etc. They suffer a lot and it really works for the Chinese government.

Sometimes self-censorship is not to avoid punishment, but to gain benefit or keep privilege. Like when I was a visiting scholar at Harvard Law School and I planned a talk. The two speakers are me and Chen Guangcheng. Then the university canceled our talk. The reason was the Harvard president was in Beijing meeting Xi Jinping. This kind of self-censorship cannot be justified. Exaggerated fear and the willingness to gain benefit from an autocratic regime lead to intellectual dishonesty and moral cowardice. That harms the reputation of a scholar or an institution. In some cases, it harms precious academic freedom, independent thinking, and moral integrity.

Some universities and think tanks accepted a huge amount of money from the Chinese authorities or from business or institutions that are closely connected to the Chinese government. It's not possible that their recruitment, choices of research, narratives, and viewpoints are not influenced by the donors, because that's the CCP's purpose in spending money.

The Chinese government has increased their harassment and attacks against international scholars. There are many examples, like Professor Anne-Marie Brady in New Zealand. Her home and office were broken into and her car tires were sabotaged. Recently, some firms and individuals in Xinjiang filed lawsuits against Adrian Zenz, the famous scholar on Xinjiang and the Uyghur genocide. Early this week, the Chinese government sanctioned 10 EU individuals including two scholars. They and their family members were all banned from entering China, Hong Kong, and Macau.

This is an increasing issue and it has influenced a lot. Many students give up their theme of dissertation. Some students, especially those from mainland China, dare not to choose a course, though they are very interested in that. Some students have requested to be anonymous when joining a conversation or online class.

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Trying to articulate standards that we can collectively hold ourselves to is important as a first step.

Eva Pils: I would like to start by cautioning against uses of the dichotomy between perpetrators and victims and between active and passive modes that we sometimes find in the discussion of this issue. Of course, there can be victims of academic repression, also

transnational academic repression. I think that Teng Biao has offered some very personal and very powerful examples and also reminded us of the recent experience of Dr. Adrian Zenz, the well-known scholar on human rights violations in Xinjiang. Where there are victims of this kind, it is of course really important to think about how to protect them and also about how the law can protect them.

There also is agency on the liberal democratic side of academic exchanges and collaboration with China. People do get to make choices.

But these choices are very often affected by the situation and the choices made by others. Self-censorship is a good example. I would want to continue using this word, because I think it does capture a very important [potential] ethical dilemma: What do you do if you are asked to self-censor in order to protect an academic collaboration partner in China who might be put at risk or feel they might be put at risk if you didn't self-censor? What do you do if asked by a junior scholar or a would-be research student to lie to their government in order to protect their safety? I think that those kinds of situations do raise ethical dilemmas that we cannot dismiss.

Moreover, precisely because repression works using fear, and precisely because fear clouds judgment, there is a range of responses we will get from different people who experience fear differently and may have different considerations about their families, about their social environment etc., that affect their choices. As researchers, as scholars working on and with and partly in China, we are affected. We are caught up in these very complex issues.

While I absolutely agree that there can be selfish self-censorship, there can be selfish choices and choices that are in ethical terms unpardonable and attract blame, there's sometimes also a kind of altruistic self-censorship that takes into consideration the situation of others, or that simply happens under enormous pressure, sometimes amounting to situations similar to duress.

That fact, that sort of basic setting in which we find ourselves calls for more thought about the ethics of complicity, the kinds of complicity with transnational academic repression that can arise. It remains important to think about personal, individual ethical responsibility—about potential individual blame and guilt – but we need to go beyond that, not least because quite often, when we get to make the decision to self-censor or not, or to lie or not, it is already too late really to address a problem that we have become caught up in because of a long-standing collaborative relationship that has already been established. So I think that to some extent we need to shift away from a discourse entirely focused on blame – of individuals or institutions – and move towards a more institutional and collective and political thinking about our responsibilities. We can do that by drawing loosely on the work of Iris Marion Young on structural injustice.

I would make two suggestions in this context. The first is, in the medium term, I do think that we actually need a lot more research. Some wonderful research has been done, not least by Rory Truex and his colleagues. There is the Academic Freedom Index, which I think is very, very helpful. But more [research] needs to be done to understand how the way academia is structured and institutionalized in different systems in liberal democracies makes us more or less vulnerable. To give one example, I'm speaking to you from London, from the UK. Our academic institutions, our higher education, is

incredibly marketized and that, in my view, has made us very vulnerable.

In the short term, some colleagues and I, including academic scholars but also colleagues working in NGOs like the European CARA [Council for At-Risk Academics] network and the NGO Scholars at Risk, have come up with a code of conduct that tries to identify a number of areas of concern that we need to pay attention to. The group calls itself the Academic Freedom and Internationalization Working Group. The code of conduct is complex but fundamentally, what we're trying to call for is transparency. We need to have more transparency about the terms of engagement and the kinds of risk that collaboration and exchange with repressive systems in this academic context can trigger. That is essential for enabling more scrutiny and ultimately, potentially accountability.

Second, we also need to have proper due diligence. That due diligence has to involve area studies experts; it has to involve those who are affected by collaboration and exchange programs, rather than having these exchanges and programs decided by academic administrators who have very important functions but often just don't understand the kinds of risk they are generating.

Third, anyone who as a scholar or student comes to our institutions these days is facing potential risks of transnational censorship. They are being put under pressure about what they say while here, perhaps even being put under pressure to report back about their experiences, etc. We are calling for mechanisms of confidential consultation that would help address these kinds of dilemmas. Then there's also the very concerning situation of the student or scholar who comes here and finds themselves stigmatized and discriminated against.

And lastly, of course, we also have responsibilities towards scholars and students going the other direction, who may be exposing themselves to risks that need to be properly assessed and managed as best we can. We need to take responsibility in the kinds of situation that Teng Biao was getting at, when scholars find themselves suddenly excluded because their visas to China or any other country are denied. I think academia has a responsibility to accept that as a potential consequence of good scholarship, and to create mechanisms of support for scholars to whom this happens because, especially if it happens to an early career scholar, it is a very, very intimidating prospect.

I would in no way suggest that a code of conduct, a bottom-up mechanism of self-regulation, merely identifying areas of concern and making promises about institutional change, actually brings about any meaningful change just by itself. But I do think that trying to articulate standards that we can collectively hold ourselves to is important as a first step. These standards can also be used by universities, by funding organizations. Also they can be used in interaction with academic collaborators in autocratic systems and repressive systems as standards that have to be observed because they have been collectively accepted.

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We as scholars of China share a particular obligation to call out those who seek to take advantage of the worsening of US-China relations to target Asian-Americans.

Benjamin Liebman: I want to start with one comment about the situation here at home in the US, because I do think it's important at this moment for us to reiterate the obligation that we all face to work to combat anti-Asian bias in this country, in particular here in New York City. I do think that we as scholars of China share a particular obligation to call out those who seek to take advantage of the worsening of US-China relations to target Asian-Americans. Anti-Asian bias is just about as old as is this country, but we are in a particular moment where we are seeing a rise of anti-Asian violence and racism, some of it feeding off the narrative about China. This obligation really needs to be on all of us. I think all of us would certainly agree that our institutions are so much stronger for having strong representation of students from Asia and also Asian-Americans. I think we've also realized over the last couple weeks that many of our institutions have given far too little attention to this issue or taken far too few steps to fight anti-Asian bias here at home.

Also we all need to be speaking up when we perceive our own government-driven China policy to be targeting scholars based primarily on their race or their ties with China. I don't know if Maggie Lewis is on this call or not, but Maggie did a great event a couple weeks ago, it's on YouTube, hosted I think at Princeton, on the FBI's China Initiative and I just want to tip my hat to Maggie and urge folks here to go back and watch that as well. We need to seek out opportunities to better educate policymakers here in the US about why some of our own policies can at times be self-destructive.

Second, I want to shift and talk about interactions with and in China. We've been talking a lot about how we react here in our own classrooms. I want to raise the question of how we actively engage with China going forward. And, in particular the question of whether we can develop even rough guidelines for how we as scholars interact with China, and in particular, institutions in China, if and when travel resumes. … I want to raise this question of what we do in China, as opposed to how we react here. I personally continue to be a deep believer in academic engagement with our Chinese colleagues. I think it's incredibly important to continue this engagement, both here in the US and in China. We need scholarly discussions, in particular when our governments are barely talking to each other, and this is true in areas where maybe cooperation might be possible like climate change, public health, but also across the board, including in areas like law.

The question is, how do we do this responsibly? What do we do about events in China that are hosted by universities or organizations that either have very strong state ties, or that have targeted individual academics? When does our engagement cross over into legitimization of official policies? And should we be shying away from interactions with certain institutions or universities in China that have terminated their faculty on the orders of the party or that back up state repression in other ways?

There are no clear answers. I think there are also some things we can keep in mind as well. I think one suggestion is that we focus on the scholarship. Smaller conferences are far more likely to be valuable than are large high-profile international events hosted in China. Most of us probably have a pretty good sense of when conferences and events in China are likely to be more show than substance. Small-scale interactions of the type that I think the U.S.-Asia Law Institute often does with legal scholars are great, where you get a small number of people in the room or on Zoom talking about a particular issue. In subject matters, we should be focusing

on areas where relatively open discussion is possible.

Mainly I just want to suggest that we need to be continuing to ask this question: what types of scholarly interaction make the most sense right now and will make the most sense going forward? I just want to add a maybe a footnote here. There's increased complexity now where we have certain Chinese universities being put on the US government's entities list, and although my understanding is that doesn't necessarily affect our ability to go and attend conferences at these universities, it does make these issues more complex. Just the fact that many of us now, when we go to China, we have to first talk to our own legal departments at our universities, I think it's something we didn't really think about just a few years ago.

And then third, I want to pick up on something that I think has been said before but maybe frame it a little bit differently. The question I'd say is, how do we study a country that no longer wants to be studied? In particular, how do we advise our students and our more junior colleagues about having to navigate this project of studying China in an era in which China's attitude towards foreign scholars has dramatically shifted? We are in a moment where traditional methods that have dominated China studies writ large, most notably, qualitative field work, simply may not be possible anymore. I think that's probably the case.

This sort of leads us, I think, into two different directions in terms of how we talk about this. One, how do we talk about the data we're now using to study China. There's lots of public data available in China. That gives rise to challenges as well, and I think most people on this call will be aware that maybe we shouldn't take public data at face value. I also just want to flag that there's a huge amount of scholarship coming out both from China and outside of China using public data that I think doesn't do enough to challenge the quality of that data. That's one side: what are our new sets of data?

I think the related question is how do we guide our students towards academic careers in which research is going to be far harder to conduct than it was for all of us? How do we advise them about the risks of doing field work, even if they are able to travel to China? And again this is not a new risk. … I want to invite Andy to comment on this as well. Of course we know China scholars have long been creative. It's still much easier to get information about China now than it was for our predecessors in the 1960s, when they were relying largely on interviewing refugees fleeing China to Hong Kong. We have a lot of new tools, but I do think it's important to recognize we're in a moment where how we study China probably is going to change fairly dramatically. Many of us have really benefited from a 20- or 30-year period in which China was remarkably open to foreign scholars. And … it clearly may be changing.

We need to think hard about how we guide, train, and support our students and, in particular junior scholars who are pre-tenure. I want to reiterate something Rory pointed out. It's really important that we also educate our colleagues who are not in the China field about this. We need to do a much better job of educating colleagues who don't study China about the complexities of studying China today….

China's sanctions against MERICS and against China scholars in Europe this week raises the question of how we best stand with our colleagues who are being targeted and what we can do to encourage our institutions to respond, because I think many of us know institutional

responses in support of scholars who've been targeted by the Chinese government has not always been as strong as many of us would like to see. . . .

Lots of us are at institutions that have a footprint in China. Those footprints differ in the shape they take. Some are like NYU with an actual campus; some are like Columbia, just an office. Too often, when we focus on risks to operating in China, we focus almost exclusively on the experience of our students or what happens when our professors go over there. I just want to put in a plea that we also think about the interests of our staff on the ground in China who are working really hard to further academic interactions, but who also at times put themselves at risk in order to further the interest of our universities.

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It might seem that the easy answer is that Columbia should ban everything to do with China because China bans Andy Nathan. I myself don't agree with that.

Andrew Nathan: As I said at the beginning, it seems to me that all ethical dilemmas involve trade-offs between or among things that are good. But some ethical dilemmas are easier to resolve than others. So, for example, Rory's presentation, which is very thoughtful and very important, and I'm grateful to you and your colleagues for having done it, what you've come up with I think it's easy for all of us to say you're right. The importance of academic freedom and intellectually valid teaching is uppermost, and then we take ameliorative measures to reduce the costs. It's not really a painful trade-off. But a lot of the ethical dilemmas that we face are truly, truly painful. And I would give my own example, by the way, of being banned [for having co-edited *The Tiananmen Papers*], as one that was not a big deal because I had tenure -- which tells you the importance of tenure -- so it's kind of an easy choice.

The university is a gigantic enterprise, and it has many relations with China that are valuable and constructive, both for China or for the world, when we're doing various kinds of scientific research. And at the same time, there's going to be one or two of us who get in trouble [with China] in the university. It might seem that the easy answer is that Columbia should ban everything to do with China because China bans Andy Nathan. I myself don't agree with that. I think it's more of a painful trade off.

I think the Confucius Institutes for many institutions are a similar case, where they need the money and the Confucius Institute isn't doing anything that bad. Ben raised the question of when do we continue to collaborate with Chinese colleagues or institutions; how bad does it have to be before we cut off all collaboration.

Advising our students to self-censor or Ezra Vogel's controversial decision to allow his biography of Deng Xiaoping to be published [in Chinese translation] with some cuts. His reason for allowing that was because he wanted the rest of the book to be available to Chinese readers. Most of the problems – only a few are relatively clear and easy, and most of them are extraordinarily difficult.

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To what extent is it worthwhile and appropriate to go on taking part in conferences with China?

Jerry Cohen: This is a fabulous program. It is a wonderful tribute to Tim Gelatt. He would have been thrilled to be here and to listen to these various stimulating viewpoints. As Andy said at the outset, Tim was my student; he was my law firm associate. We worked together on publishing things. He taught at NYU as an adjunct. He was one of the most intense scholars and lawyers I've ever known. He was a constant goad to me to keep up with human rights even while trying to practice law.

I have a set of questions for the panel. These are questions that I confront in my daily life. First, when some of us criticize China's human rights violations, some people in America and elsewhere say we are poisoning the climate for improving Sino-American relations. These are one-sided criticisms and we should moderate.

Second dilemma is: should we support objective Chinese criticisms of American and other governments' violations of human rights? We are criticized because they say: if we say China has some credibility in some of its attacks, then we're giving the Communists the rope to hang the capitalists. We just heard that in the Wall Street Journal again the other day.

Third dilemma, and this is very personal, is: to what extent is it worthwhile and appropriate to go on taking part in conferences with China? Academic conferences, track 2 political-legal dialogues. Is it a waste of time? Does it depend on the subject? I find personally human rights discussions with China in recent years are not very valuable, even though on coffee and tea breaks friends on the Chinese side may whisper what they think. On the other hand, if we have a dialogue about the legal and political problems in the South China Sea or the East China Sea, I find those discussions still are worthwhile. Is it a waste of time, or is it important to give support by taking part in these meetings to those colleagues on the other side whom we have requested to participate? I rationalize so far my continuing participation because it's good for my Chinese language to hear them speak. But that's a pretty narrow and personal satisfaction.

I'm really delighted to hear my colleague and friend Teng Biao focus on the ethical dilemmas for Chinese scholars. I have sometime been openly critical in forums in China and Hong Kong about the failure of many of China's great legal experts to speak out against the abuses and practice that the regime engages in. They are afraid of losing their influence in drafting and influencing important legislation, legislation that may not be followed today but at least sets goals for the future. And that's a very important role that no one else will play. On the other hand, their quiet failure to criticize the attacks on colleagues like Teng Biao and others has been very discouraging. Maybe I've been too tough on them. Maybe I haven't sufficiently considered their own dilemmas and values.

Finally I would just say, scholars are luckier than lawyers. I left practice happily 20 years ago when I could have continued because I felt I wasn't totally free. I was responsible for a large group of people in a law firm successfully doing business with China and it was beginning to have an adverse reaction. As a scholar, one needs to be free. I realize it is easier for a senior, older scholar to speak out than it is for the students and the young teachers in this field.

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Andrew Nathan: When do we stop seeking to collaborate with Chinese scholars and institutions? How bad does it have to be? Teng Biao, do you want to address that? When would

you advocate that American-based scholars say: "I refuse to collaborate with any Chinese institution or scholar. I'm not going to meet with them"? After Tiananmen in 1989, there was a strong wave of advocacy: we should cut off academic exchange with China. Should we have done that then or now, or soon?

Teng Biao: We have to evaluate that case by case. The money from the Chinese government, in principle Western universities and think tanks should reject – money directly from the Chinese government and its affiliations. But some [situations] are not so clear. Some foundations have connections with the Chinese government, more or less like the Tung Chee-hwa foundation, the former chief executive of Hong Kong, and Tsai, the vice head of Alibaba. American universities should be very careful to accept their donations. To cooperate with Chinese scholars and Chinese institutions – of course we don't need to cut off all the connections. We should play a role in spreading information and encourage independent thinking and research of Chinese scholars.

Some self-censorship is understandable and even necessary; some is not acceptable, not necessary. If you keep silence for some human rights violations in order to continue your research or protect your personal safety or your students' safety, that's totally fine. But like the ongoing genocide in Xinjiang – if you are a scholar on Chinese Muslims, on religious freedom and you keep totally silent in order not to be banned from traveling to Xinjiang – that kind of tradeoff is not reasonable. What is happening is genocide. That is not a regular human rights violation.

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All governments want to control the discourse and the way they're seen in the world. Is it just that China has more tools at its disposal?

Katherine Wilhelm: I wonder to what extent what China is doing now is qualitatively or quantitatively or both different from what other governments have tried to do. All governments want to control the discourse and the way they're seen in the world. Is it just that China has more tools at its disposal, has the financial means to exact a price, and is more motivated to do so than other countries?

Another concern that I have is group think and the harm that we may be doing by even having a conversation like this. I think Ben was the one who use the term stigmatizing in the context of not wanting to stigmatize researchers who come from China, Chinese-Americans. We don't want to exaggerate the problem and therefore scare people away. Does the conversation in itself do harm and do we create a kind of group think within the academy, where we start to reach a sort of consensus about how we should approach the problem of China?

Eva Pils: When we look to what happens in the Xinjiang Uyghur autonomous region, the technically supported crimes against humanity, potential genocide that is happening, I do think that is a stepping up of repression that is remarkable, even in the context of China. I do feel very strongly that it needs to be called out. One of the wonderful points that Jerry made, when we criticize China, how about criticizing other governments for their human rights violations? Often that question is raised more as a kind of concern about whataboutism – namely, this idea that we can't criticize China because of human rights violations happening elsewhere. We should reject that very, very flawed argument. We also have to reject the idea that in raising justified

criticism of human rights somewhere, we are somehow making someone else's argument. As scholars we just have an obligation to try and call out, to speak to the issues where we have expertise. If that happens to be human rights, then we call out human rights violations wherever they happen. I personally want to trust our ability as a community of academics, of people thinking critically, to tease out the nuances and to live with disagreement and work with disagreement on these issues. The danger of group think about China, some sort of new Cold War thinking, doesn't come so much from within academia but more from politics. Academics can play a constructive role and have a responsibility to contribute to the discussion precisely because of that.

Ben Liebman: I want to push back against the frame [of] when does it become so bad? I don't think I was suggesting that at some point things get so bad that we shut it off. I think that's the wrong way to think about it. The way to think about it is: how do we ethically engage, what are the subjects where we can actually have productive conversations? How do we continue to do programming here and educate our students and colleagues about the situation in China? I am uncomfortable with the postulate that at some point it might be so bad that we just shut it off. I am just arguing for being smarter and being conscious about the types of events that we are participating in.

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Ideally what we would have is a situation where when MERICS gets sanctioned, other institutions are responding in kind.

Audience question: After China imposed sanctions on the German think tank MERICS [Mercator Institute for China Studies], reports emerged of other researchers and institutions breaking ties with or seeking to distance themselves from MERICS, for example omitting internships with MERICS from their CVs. Chambers of commerce are making sure that researchers that work with them do not have a connection to MERICS. How do we respond to this?

Rory Truex: To my knowledge, this does represent a real escalation on the part of the Chinese government by actually sanctioning a think tank. I think it's the first potentially of many. It's not going to stop here. … Ideally what we would have is a situation where when MERICS gets sanctioned, other institutions are responding in kind. An affront to MERICS is an affront to CSIS, it's an affront to Princeton, it's an affront to Columbia. We need coordination. There's a pattern in the China field where institutions cross the Chinese government and they face an individual price and that's that, and other institutions don't do much in the way of coming to their defense. We're probably at the time where Western academic and research institutions that interface with China need some sort of statement of shared principles and maybe even a shared response when this sort of things happens, otherwise it's going to keep happening.

On some trips that I've been on where individual scholars will have visa issues, the response has been: if one of the people in our delegation is not allowed to go, the entire delegation won't go. The Chinese government still does want to have relations with Western academic institutions. … I think the principle of you target one person and we all have a response – I think that's the way to start thinking about it.

Benjamin Liebman: The response should be more like: attending MERICS events, inviting MERICS folks to participate at our events. The response has got to be to continue to engage also with those folks who have been targeted by China. I think that's the strongest response we can have.

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Audience question: Can the panel speak to the academy's responsibilities to the public? How can we be open and honest about developments in China and dispel disinformation being propagated without exacerbating anti-Asia sentiment?

Teng Biao: I agree: we are not against Chinese people, we are not against China. We should reject that kind of narrative. But at the same time, we should have more strict scrutiny of Chinese money, the Confucius Institute, the Chinese Students and Scholars Association, the CSSA, and the Chinese propaganda machine, the Xinhua News Agency and the Global Times. Some Chinese think tanks and scholars visiting are part of the propaganda machine, so we should make more effort to counter the disinformation campaign in the name of academic research or media. Of course, disinformation is a big problem in many countries, not only from China. But here it is really a severe problem that China scholars have a responsibility to fight against.

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Andrew Nathan: Eva, let me ask you, some people say that as scholars, we should be strictly academic, we should not spend our time denouncing human rights violations or taking a position on whether Xinjiang is genocide or not genocide because it's important that we keep our purity and credibility as academics, something that you and I have not done. What is your position on that?

Eva Pils: All the questions that you just mentioned are of course questions of scholarly inquiry and discussion. Legal scholars and political science, international relations scholars and so on, I think that we absolutely do have to contribute to these discussions. … I think we actually need to resist the psychological effect of this attempt to distinguish between legitimate and somehow not so legitimate expression. Going back to the previous question, I think that's exactly why I think we have a responsibility to complicate the understanding of China and to resist a simplistic sort of friend-enemy perception of China as well.

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I want to put in a plug for continuing to talk to Chinese audiences.

Audience question: Regarding foreign academics who accept visiting positions at Chinese universities, is it realistic to think that as a foreign citizen you can teach freely enough to benefit the students at limited risk to yourself? What about the risk to those you teach and to the Chinese scholars who sponsored your appointment?

Jerry Cohen: In the late 80s, I tried to persuade the NYU Law School faculty to set up an LLM program in both Shanghai and Beijing. It was a divisive question. In the end, despite some strong faculty support, including from our then-dean John Sexton, I withdrew it. But when John became president of NYU, he had this great idea at a time when it seemed optimistic and possible to have a free, foreign academic outpost, a branch in China as in other countries. NYU went

into this. It has been increasingly difficult of course, despite great leadership on the part of the NYU people and some good cooperation in China, to carry on as freely as possible. … I admire the effort. Generally I think it's extremely important to keep up this cooperation. It may not be tenable for too long if the current trend in China increases.

Benjamin Liebman: When we talk about public education, we shouldn't rule out public education in China. Of course the public we talk to in China may be elites. I want to put in a plug for continuing to talk to Chinese audiences. We've seen pretty high take-up rates for events we've geared to our Chinese center. … When we think about reaching out to the public to talk more in this particularly fraught moment, there still remain opportunities to reach if not the public generally, then certain sectors of the public in China. I think we should seize on those as well.

Rory Truex: Every single foreigner who walks into China is self-censoring in some way. We don't all run around speaking our minds about the Chinese government when we're there and that doesn't mean that those exchanges and interactions aren't valuable. And I think the criterion for a good teaching position or a relationship should never be "is there full freedom of speech at this institution," because I think that will likely get off the table most academic exchanges with China. I think you would also be surprised, and I have friends who are working at places like NYU Shanghai or have guest-taught at Schwarzman and places like this, there is a lot more space than I think a lot of people would imagine. I'm in favor of these sorts of exchanges. I just think the individual needs to be aware of what they're getting themselves into and also work to not put other people at risk through their own activities.

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We need to establish communication with the fundraisers and across the university campus. The problem … is that it's actually quite difficult to get anyone to listen.

Audience question: Should the China scholars at universities reach out to the development office to talk about some of these ethical questions? Are there issues that the development office should be aware of? What should the China scholars be doing to educate their colleagues on campus?

Eva Pils: Absolutely, we need to establish communication with the fundraisers and across the university campus. The problem in my experience, and I think that reflects the experience of some others, is that it's actually quite difficult to get anyone to listen, especially in the university administration. Because, fundamentally, we want to tell them about problems, new problems, that they would perhaps rather ignore while busily raising funds and setting up programs. That is a real institutional challenge.

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Audience question: Several people have asked about student spies or student informants in the classroom. Are there known cases of this happening on US campuses? Have any of the professors experienced this in your classrooms? If so, how have you dealt with it?

Eva Pils: Universities should have policies clarifying that reporting should not happen and will not be tolerated. But also at the same time,

students or scholars do report. They may do that under a great deal of pressure and that must inform the way we deal with the problem if we do become aware of it. We shouldn't just entirely condemn and blame people without trying to understand the situation that gave rise to this practice.

Teng Biao: That's a very big problem in China but also a problem in American classrooms when there is more than one Chinese student. What the Chinese students in the West fear most is the other Chinese students reporting their discussion, their speech and point of views, especially the Chinese Students and Scholars Associations. I had an experience that my panel was canceled because the CSSA students reported it in advance and then the Chinese consulate gave pressure to that university. That fear is real. Every Chinese student knows that. Then they are reluctant to register for my course or to raise issues in the classroom.

Jerry Cohen: From a personal point of view, since I no longer have contact with Chinese leaders, I welcome if there are secret police listening to what I say. It's my only way possibly to get communication up to the leadership. But it has a very bad effect of course on the classroom and on other public discussions.

Rory Truex: I think we all agree this is a problem. We don't know the severity. We don't know how many students are doing this, we don't know to what extent they're doing this. I think there's a danger here if universities overemphasize this issue. … There's already a narrative that Chinese students are spies for the Chinese government and stealing American technology. And what exactly are we supposed to do with that type of information? Should there be a "if you see something, say something mentality," where we're supposed to be monitoring our students for their monitoring and then trying to report them? It's one of those problems that's actually quite difficult to solve. Even though we all acknowledge that it's a problem, sometimes I actually worry that over-emphasizing it might make it worse and breed an environment of stigmatization and self-censorship.

Benjamin Liebman: If there's a problem we should deal with it, but this narrative of Chinese students as spies is also one of the things that's fueling a lot of the anti-Chinese racism in the United States right now. So I just think it's important to shift from framing "are Chinese students spies" to what are the actual problems, what is the actual evidence. Let's look at it. I don't think the FBI has been helpful on this by fueling this idea that Chinese students are spies. We have to be really clear-eyed about what's going on and not over-sensationalize it.

We should talk about what are the practical things we can do. My class has a Las Vegas rule: what's said in the classroom stays in the classroom. Is it enforceable? No, but it sets a tone that we expect you not to talk outside the classroom about what's said in this classroom without permission. I do not record any of my classes on China. .. What I'm really concerned about is creating a situation in which students feel comfortable about participating, and setting norms that say we don't talk outside the class …. I've been pleasantly surprised about the level of conversation we get, even in classes about China.

Eva Pils: I think that signaling that what's said in the classroom stays in the classroom is precisely the kind of policy that we need to adopt in order to alleviate concerns. I want to go back to what Teng Biao said. It is often *Chinese* students themselves who are particularly afraid of being

spied on. We have to keep that in mind as well. We have to take up responsibility for these students who might be self-censoring. It is important to consider the possibility of confidential mechanisms, some sort of ombudsman person within their university. One of the ways of addressing it is by clarifying that when we think about these big issues of engaging with academics and students from repressive countries, we are not thinking about just one country. Of course this is about China – but it's not only about China. That can also help alleviate the concern that we are stigmatizing people just because they are Chinese.

Teng Biao: Chinese students are not professional spies, most of them are not. But the Chinese consulates create an atmosphere to encourage every Chinese student to report. Yes, it's a problem but I agree we should not over-react. This is related to the NYU Shanghai and Johns Hopkins and Duke University in Kunshan, that kind of atmosphere makes Chinese students silent. So when these universities argue that they can enjoy academic freedom in China, even though Chinese people don't enjoy free speech, that seems not justifiable, because there is no academic free discussion in the classrooms at these Western universities in mainland China.

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