

**“BUT FOR WUHAN?”: DO LAW SCHOOLS
OPERATING IN AUTHORITARIAN REGIMES HAVE
HUMAN RIGHTS OBLIGATIONS?**

KEYNOTE ADDRESS

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ABSTRACT

American law schools and universities are globalizing as never before. This academic form of globalization ranges from modest student and faculty exchanges with foreign counterparts to joint degree programs to full campuses abroad. International initiatives by U.S. academic institutions are numerous and only likely to grow. Yet what happens when a U.S. academy reaches out to do business with, or in, an authoritarian regime? The results to date are not encouraging. Scholarly interaction in theory promotes such mutual benefits as understanding, dialogue, and exposure to fresh ideas. Two recent, high-profile examples, however, suggest potential costs. Yale, joining with the National University of Singapore, has for the first time lent its name to a campus outside New Haven. Aside from working with a regime that poses significant human rights concerns, the Yale-NUS initiative has gone further to ban student political protests and organizations from its grounds. Along similar lines, a number of deans from self-proclaimed leading U.S. law schools recently held a “summit” meeting in China with their Chinese counterparts. They did so, however, in the midst of a most brutal crackdown on lawyers and law professors that included disappearances, detention, and torture. None of these leading deans indicated any awareness of the situation, commented on it, or took up subsequent NGO efforts to involve them in addressing the problem. These lapses suggest that U.S. law schools and universities can and should do better. International human rights law does not directly address this problem, but industry efforts at self-regulation do suggest ways forward. These include a need for institutions to (1) educate themselves about the human rights record of a host or partner regime; (2) consider alternative partners

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where feasible; (3) refrain from actions that contribute to human rights violations; (4) deliberately promote the rule of law and fundamental rights; and (5) constructively engage a government when it commits serious human rights abuses, especially as it affects those persecuted for exercising academic freedom or providing legal representation for unpopular causes. Whatever the precise solutions, academic leaders in the United States must at least begin by acknowledging that doing business with authoritarian regimes creates problems that can no longer be ignored.

INTRODUCTION

Let me begin with the title of these remarks, which requires explanation. It alludes—loosely—to a scene from a play that is a treasure trove of quotes for the legal profession: *A Man for All Seasons*.¹ The scene takes place as Sir Thomas More is being tried in Parliament for high treason.² The only way that the king and his ministers were able to make the charge stick was by having someone perjure himself.³ That person was a former protégé of More, Richard Rich. Just after Rich commits perjury, as he begins to leave the witness stand, More indicates that he does have one question for the witness: “That’s a chain of office you are wearing . . . The red dragon. What’s this?”⁴ The court answers, “Sir Richard is appointed Attorney-General for Wales.” More’s classic response: “Why, Richard, it profits a man nothing to give his soul for the whole world . . . But for Wales!”⁵

Substitute Rich, perjury, and the attorney generalship of Wales with a U.S. university, violating human rights obligations, and a campus in Wuhan. Put another way, what does it profit for a law school to sacrifice its commitment to academic freedom and fundamental rights—its central academic mission—in order to be able to do business in an authoritarian regime? The original inspiration for this query arose when Yale decided to establish a joint campus in Singapore, an ongoing initiative to which I shall return. “Wuhan,” however, sounded more like “Wales,” or at least was more alliterative. Wuhan also raises the much larger stakes of engaging with a

1. ROBERT BOLT, *A MAN FOR ALL SEASONS* 158 (First Vintage Int’l 1990) (1960).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

nation such as China, where it is inevitable and desirable that U.S. law schools should be engaging in outreach.

First, my remarks will consider the challenges that face U.S. law schools when undertaking various partnerships or other initiatives in authoritarian regimes. Next, these reflections will consider, through a few admittedly provocative anecdotes, how these challenges have manifested for U.S. law schools and universities expanding into other nations. Finally, I hope to suggest a way forward to better meet the challenge.

I. ACADEMIC GLOBALIZATION

The challenge of setting up shop in an authoritarian regime raises the question: What is an authoritarian regime? There is a potential dead end here, and at the outset no less. It does not take a visionary to see that all sorts of controversy concerning the authoritarian label can sidetrack any further discussion.⁶ Is the United Kingdom an authoritarian regime based on its response to paramilitary violence in Northern Ireland? Is Myanmar not because Aung Sang Suu Kyi is free and now an elected Member of Parliament? You can start with any number of different baselines or templates. You might use something like a Freedom House ranking to define what countries may be problematic when you are going to think about what partnerships exist.⁷ Conversely, you could rely on the Potter Stewart approach with respect to obscenity: you will know an authoritarian regime when you see it, and therefore should respond accordingly.⁸

In one sense, whether you characterize a regime as authoritarian is irrelevant for my purposes. Instead, the challenges and solutions to doing business in any regime will exist to the extent that there are systematic fundamental human rights violations in particular re-

6. By way of comparison, many academics and rulers of authoritarian states have argued that Asian values differ from Western views on human rights. That assertion in part founded on the difficulty of figuring out just who and what qualified as “Asian.” See HUMAN RIGHTS, SOUTHERN VOICES: FRANCIS DENG, ABDULLAH AN-NA’IM, YASH GHAI AND UPENDRA BAXI 121 (William Twining ed., 2009). See generally Yash Ghai, *Human Rights and Asian Values*, 9 PUB. L. REV. 168 (1998) (arguing that the idea of “Asian values” is incoherent and contested).

7. See *Regions*, FREEDOMHOUSE, <http://www.freedomhouse.org/regions> (last visited Mar. 25, 2013).

8. Discussing possible obscenity in the film *The Lovers*, Justice Stewart wrote:

I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description [hard-core pornography]; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that.

Jacobellis v. Ohio, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

gimes. A nation such as North Korea engages in so many human rights abuses that it would present a corresponding number of problems for any law school seeking to do business there. Yet the United States has significant and systemic human rights violations in its own right. The most obvious are post-September 11th abuses,⁹ though other issues continually emerge, such as the suppression of dissent associated with the Occupy Wall Street protests.¹⁰ This is not to support the non-starter of moral equivalence. There is a substantial difference between nations that many observers would be hard-pressed to call authoritarian—such as the United States, Canada, and Sweden—and nations that would qualify as authoritarian by most measures—such as North Korea, Belarus, and China. The point is that the label is not what matters. What matters is that any obligations U.S. law schools have in operating abroad apply to any regime to the extent that the state in question systematically violates fundamental rights and freedoms.

So much, for now, about host regimes. What of the academic initiatives that journey abroad? This is not the place to attempt an exhaustive catalogue of university and law school programs, partnerships, and exchanges. That project would be useful, if ever changing. But it is not central to my present purpose. Suffice it for the moment to make two brief points.

First, a wide range of initiatives flourishes at U.S. schools. At one end of the spectrum is the typical and fairly minimal exchange program. A U.S. law school signs a memorandum of understanding with a counterpart in France, the Netherlands, Brazil, or China, for example, agreeing to a modest student or faculty exchange.¹¹ At least in my experience, the exchange has, more often than not, flowed from the foreign country to the United States, in part because of non-American students' interest in studying in the United

9. For one of the earliest examples weighing U.S. policy toward Guantanamo detainees against international standards, see generally N.Y.C. BAR ASS'N, HUMAN RIGHTS STANDARDS APPLICABLE TO THE UNITED STATES' INTERROGATION OF DETAINEES (2003), available at <http://www.nycbar.org/pdf/HUMANRIGHTS.pdf>.

10. See generally PROTEST & ASSEMBLY RIGHTS PROJECT, SUPPRESSING PROTEST: HUMAN RIGHTS VIOLATIONS IN THE U.S. RESPONSE TO OCCUPY WALL STREET (2012), available at <http://www.leitnercenter.org/files/Report%20-%20SuppressingProtest.pdf>.

11. Joanna Klimaski, *Fordham and China Forge Lasting Partnerships*, INSIDE FORDHAM (Apr. 6, 2013), http://www.fordham.edu/campus_resources/enewsroom/inside_fordham/january_14_2013/news/fordham_and_china_fo_89935.asp. Fordham University, for example, recently announced a number of joint degree programs and other partnerships between its business school, graduate school of social sciences, and law school and their counterparts in China. *Id.* Apparently not worthy of mention, however, were ways in which these institutions would promote academic freedom or the rule of law.

States,¹² and in part because of U.S. students’ miserable command of foreign languages.¹³ All in all, these exchanges entail a very light footprint abroad. At the other end of the spectrum is the actual overseas satellite campus. A version of this model recently made headlines when Yale set up a physical campus with the National University of Singapore in Singapore.¹⁴ According to the breathless announcement, never before had the “Yale” brand name been extended to college grounds outside New Haven.¹⁵ Here the foreign footprint is heaviest. All of these types of programs are going to raise challenges, though to the extent that the footprint is heavier, the challenges are going to become greater.

Second, as this Symposium confirms, U.S. academic programs abroad are growing ever larger. In one sense the phenomenon is the civil society counterpart to the judicial, regulatory, and legislative forms of globalization in a world of disaggregated sovereignty, as described by Anne-Marie Slaughter, Robert Keohane, and Joseph Nye.¹⁶ Fueling this development is the growing perception that American law schools need to globalize or die.¹⁷ It follows that any and all attendant problems are going to increase as time goes on.

12. See PATRICIA CHOW, INST. OF INT’L EDUC., WHAT INTERNATIONAL STUDENTS THINK ABOUT U.S. HIGHER EDUCATION: ATTITUDES AND PERCEPTIONS OF PROSPECTIVE STUDENTS IN AFRICA, ASIA, EUROPE AND LATIN AMERICA 3 (2011).

13. See Edward Alden, *Foreign Languages and U.S. Economic Competitiveness*, Blog Post on *Renewing America*, COUNCIL ON FOREIGN RELATIONS (June 26, 2012), <http://blogs.cfr.org/renewing-america/2012/06/26/foreign-languages-and-u-s-economic-competitiveness/> (describing the decline in foreign language education in the United States).

14. Suzanne Taylor Muzzin, *NUS and Yale to Create Singapore’s First Liberal Arts College*, YALE NEWS, Mar. 31, 2011, <http://news.yale.edu/2011/03/31/nus-and-yale-create-singapore-s-first-liberal-arts-college>.

15. *Id.*

16. See, e.g., ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER 15, 131–65 (2004) (describing various forms of contemporary globalization and the disaggregation of state institutions); Robert O. Keohane & Joseph S. Nye Jr., *Governance in a Globalizing World*, in POWER AND GOVERNANCE IN A PARTIALLY GLOBALIZED WORLD 193, 193–214 (2002) (describing effects of globalization on domestic governance).

17. See generally Christopher J. Gearson, *Law Schools Go Global*, U.S. NEWS, Mar. 29, 2011, <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2011/03/29/law-schools-go-global> (discussing various international law programs and globalization trends); Karen Sloan, *Law Schools Get Serious About Globalization*, NAT’L L.J., Nov. 30, 2010, http://www.law.com/jsp/article.jsp?id=1202475430394&Law_Schools_Get_Serious_About_Globalization (describing trend of globalization in U.S. legal education).

II. SEE NO EVIL, HEAR NO EVIL, SPEAK NO EVIL

What happens when academic globalization meets authoritarian oppression? Put more concretely, what has been the response of U.S. universities and law schools when they have undertaken initiatives in regimes that commit serious human rights violations? To the point, what about academic programs in regimes that have obvious, endemic human rights violations—regimes that might even cross the border into justifying the “authoritarian” label? The response has been, in a word, discouraging. Universities, law schools, and their respective administrators have tended to stick their heads in the sand and ignore the challenges that their activities create.¹⁸ Two high profile, perhaps provocative, snapshots must suffice to convey the problem.

One such snapshot is the Yale-in-Singapore issue. As noted, Yale opened a physical joint campus in Singapore with the National University of Singapore (Yale-NUS).¹⁹ From what I can tell—and in full disclosure, I am a Yale alumnus—as far as this partnership goes, Yale wants to have it both ways. The university trumpets, also as noted, that this is the first use of the Yale brand name at a foreign campus.²⁰ Yet, Yale also wants to ensure a degree of separation. That is, the university quickly points out that students at the Yale-NUS campus will not actually be receiving a full-fledged Yale diploma.²¹ Yale may have extended its name to Singapore, however, this separation allows the university to assert that its alter ego is not truly Yale.²²

Singapore is not North Korea. The city-state may not be among the world’s most authoritarian states, but by most measures it would qualify as authoritarian nonetheless.²³ It has also been a

18. See, e.g., Editorial, *Yale-NUS Students Deserve Free Speech*, YALE DAILY NEWS, July 23, 2012, <http://www.yaledailynews.com/blog/2012/07/23/newsviewyale-nus-students-deserve-free-speech/> (discussing the problem of law school administrations that do not address free speech issues in global education).

19. Lisa W. Foderaro, *Yale Plans to Create a College in Singapore*, N.Y. TIMES, Sept. 13, 2010, <http://www.nytimes.com/2010/09/14/education/14yale.html>.

20. Ava Kofman & Tapley Stephenson, *Yale Takes Brand to Singapore*, YALE DAILY NEWS, Mar. 27, 2012, <http://www.yaledailynews.com/blog/2012/03/27/yale-takes-brand-to-singapore/>.

21. Jane Darby Menton & Tapley Stephenson, *Yale-NUS Grads Will Have Spot in the AYA*, YALE DAILY NEWS, Sept. 17, 2012, <http://www.yaledailynews.com/blog/2012/09/17/yale-nus-grads-will-have-spot-in-the-aya/>.

22. See *id.*

23. Like China, for example. Suisheng Zhao, *The China Model and the Authoritarian State*, E. ASIA F., Aug. 31, 2011, <http://www.eastasiaforum.org/2011/08/31/the-china-model-and>

source for a vision of Asia that has been attractive to more obviously authoritarian states.²⁴ More important for present purposes, Singapore suffers from a host of well-known human rights problems, including an Internal Security Act that permits preventive detention without a warrant, filing of charges, or normal judicial review; "mandated caning as an allowable punishment for some crimes"; and "infringement of aspects of citizens' privacy rights."²⁵ More relevant still, further reported human rights problems include "restriction of speech and press freedoms and the practice of self-censorship by journalists, restriction on freedoms of assembly and association, and some limited restriction of freedom of religion," as well as restriction on academic freedoms.²⁶

How has Yale responded to these problems? In particular, how has it proposed to deal with those issues that are central to any university's mission, such as academic freedom, freedom of speech, freedom of association, and freedom of assembly? The short answer is: not particularly well. According to Human Rights Watch, the Singapore campus bearing the Yale name appears to be more a part of the problem rather than a solution.²⁷ Yale-NUS prohibits political protests out of deference to local laws.²⁸ It also prohibits political parties and student political parties from college grounds.²⁹

Compare those policies, as Human Rights Watch does, to Yale's 1975 University Policy on Freedom of Expression. That 1975 policy statement proclaims that

[t]he primary function of a university is to discover and disseminate knowledge To fulfill this function a free exchange of ideas is necessary not only within its walls but with the world beyond as well The history of intellec-

-the-authoritarian-state. See generally Gordon P. Means, *Soft Authoritarianism in Malaysia and Singapore*, 74 J. DEMOCRACY 103, 103 (1996) (discussing the ways in which Singapore's government operates in an authoritarian manner).

24. See Peter Hartcher, *Singapore a Model for Chinese Democracy*, SYDNEY MORNING HERALD, Oct. 30, 2012, <http://www.smh.com.au/opinion/politics/singapore-a-model-for-chinese-democracy-20121029-28fkc.html>; cf. Ghai, *supra* note 6.

25. See Internal Security Act, ch. 143, § 8 (1985 Rev. Ed.) (Sing.), available at [http://statutes.agc.gov.sg/aol/search/display/sllist.w3p?page=0;query=Type%3Auact,areved%20Content%3A"sedition";rec=3](http://statutes.agc.gov.sg/aol/search/display/sllist.w3p?page=0;query=Type%3Auact,areved%20Content%3A); BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T OF STATE, *Country Reports on Human Rights Practices for 2011: Singapore* 9-15, <http://www.state.gov/documents/organization/186516.pdf> (last visited Jan. 28, 2013).

26. BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, *supra* note 25, at 1, 9-15.

27. *Singapore: Yale to Curtail Rights on New Campus*, HUM. RTS. WATCH (July 19, 2012), <http://www.hrw.org/news/2012/07/19/singapore-yale-curtail-rights-new-campus>.

28. *Id.*

29. *Id.*

tual growth and discovery clearly demonstrates the need for unfettered freedom, the right to think the unthinkable, discuss the unmentionable, and challenge the unchallengeable.³⁰

In adopting the Policy, the University acknowledged that “[t]he right of free expression in a university also includes the right to peaceful dissent, protests in peaceable assembly, and orderly demonstrations, which may include picketing and the distribution of leaflets.”³¹ Other bodies have also expressed concern. The American Association of University Professors issued a lengthy open letter to the Yale community featuring queries about the restrictions on free speech, free association, and academic freedom.³² To its credit, the Yale faculty, led by Professor Seyla Benhabib, adopted a statement expressing its “concern regarding the history of lack of respect for civil and political rights in the state of Singapore,” and it further called upon Yale to guarantee that civil liberty, nondiscrimination, and political freedom are principles that are “at the heart of liberal-arts education.”³³

The Yale administration’s response to such criticism has not exactly echoed the brave words of its University Policy on Freedom of Expression.³⁴ The best it has done is to deploy a sort of recycled cultural relativism, and a fairly slapdash version at that. President Richard Levin stated that he “opposed the resolution because it did not capture the mutual respect that has characterized the Yale-NUS collaboration from the beginning.”³⁵ Yale-NUS Dean of the Faculty, Charles Bailyn, was more direct, calling the resolution “unnecessarily confrontational to our collaborators.”³⁶ In short, “think the unthinkable, discuss the unmentionable, and challenge the unchallengeable”³⁷ — unless doing so offends the sensibilities of a host regime that violates fundamental human rights.

30. COMM. ON FREEDOM OF EXPRESSION, REPORT OF THE COMMITTEE ON FREEDOM OF EXPRESSION (1975), reprinted in YALE UNIVERSITY FACULTY HANDBOOK 14, 14 (2013), available at http://www.yale.edu/provost/handbook/faculty_handbook.pdf.

31. *Singapore: Yale to Curtail Rights on New Campus*, *supra* note 27.

32. See Joan Bertin et al., *An Open Letter from the AAUP to the Yale Community*, AM. ASS’N U. PROFESSORS (Dec. 4, 2012), <http://www.aaup.org/news/2012/open-letter-aaup-yale-community>.

33. Karin Fischer, *Yale Faculty Registers Concern About Campus in Singapore*, CHRON. HIGHER EDUC., Apr. 6, 2012, <http://chronicle.com/article/Yale-Faculty-Registers-Concern/131448/>.

34. See *supra* notes 20–31 and accompanying text.

35. Fischer, *supra* note 33.

36. *Id.*

37. COMM. ON FREEDOM OF EXPRESSION, *supra* note 30.

The other example comes in the context of courses I teach at Princeton and advocacy I pursue with colleagues Jerome Cohen of NYU and Elisabeth Wickeri of the Leitner Center. In 2011, deans from the self-styled “leading” law schools in the United States went to Beijing and participated in a conference—indeed not a conference, but a “summit”—with counterparts from the leading law schools in China.³⁸ There were meetings, banquets, photo opportunities—generally “schmoozing,” as we say in New York.³⁹ The summit was held to promote academic exchanges, greater understanding between the two legal systems, and to have hands reach across the sea.⁴⁰ The summit even produced a statement of principles, among them the proposition that the rule of law is actually a good thing.⁴¹ Oddly enough, these principles fell somewhat short of what ostensibly hard-nosed, real-world lawyers have been able to produce in other contexts. For example, earlier, the New York City Bar Association and the Beijing Lawyers Association signed a memorandum of understanding to discuss periodically, among other things, “human rights.”⁴² Even so, it would be hard to argue with a group of American and Chinese law deans committing themselves to the law, especially over ten course meals.

What could possibly be wrong with any of this? Well, this meeting occurred at almost exactly the height of what was one of the worst, most vicious crackdowns on human rights and civil rights lawyers, not just in China, but anywhere. And when I say vicious, I mean vicious. Lawyers were being “disappeared” in the 1980 Latin America sense. They were being tortured.⁴³ They were being beaten.⁴⁴ Their families, including their children, were being harassed.⁴⁵ They were being forced to subscribe to undertakings saying that they would not pursue the kind of rights work that they were doing

38. *Deans from Leading China, U.S. Law Schools Agree to Collaborate to Improve Ties, Legal Education in China*, U. PA. L. SCH. (July 7, 2011), <https://www.law.upenn.edu/live/news/1967-deans-from-leading-china-us-law-schools-agree-to>.

39. *See id.*

40. *See, e.g., US-China Law Deans Summit*, U. PA. L. SCH., https://www.law.upenn.edu/international/penn_law_asia_initiative.php (last visited Feb. 19, 2013).

41. *See id.*

42. Letter from Samuel W. Seymour, President, N.Y.C. Bar Ass’n, to Bai Tao, Vice President, Beijing Lawyers Ass’n (Feb. 28, 2011) (on file with author).

43. *See Jerome A. Cohen, First, They Came for the Lawyers*, FOREIGN POL’Y, July 12, 2011, http://foreignpolicy.com/articles/2011/07/12/first_they_came_for_the_lawyers.

44. *Id.*

45. *Id.*

previously.⁴⁶ This crackdown affected not just what we would call “impact” human rights lawyers; it also affected criminal defense lawyers, lawyers representing the poor and disabled, and tort lawyers uncovering government mismanagement.⁴⁷ Several, as it happened, also taught as law professors.⁴⁸

Many reasons accounted for this particular perfect storm of intimidation. The Arab Spring prompted fears of similar movements within China.⁴⁹ The year 2012 also marked a year of transition in China’s leadership—another source for nervousness about popular unrest.⁵⁰ The crackdown was part of a much larger pattern that my colleague Carl Minzer has been writing about—a turn away from the formal rule of law and courts to mechanisms that are easier for the Chinese Communist Party (CCP) to control.⁵¹ This turn follows, in part, from the central leadership’s ostensible discovery that the rule of law not only facilitates foreign trade and investment, but may pose challenges to government and CCP hegemony.⁵²

Regardless of the causes, the results of the crackdown were evident and widely reported for anyone who cared to look. Among others, the case of Chen Guangcheng—the blind, self-taught legal activist—was making global headlines even before he escaped illegal house arrest and made his way to New York.⁵³ It did not take a human rights specialist to see that the persecution of Chen was the tip of a significant iceberg, even *before* the hammer dropped on lawyers that the regime viewed as troublesome in early 2012.⁵⁴

Now, I would be very happy to report that, at least behind the scenes, the top law school deans moved beyond bland statements

46. *Id.*

47. *Id.*

48. See, e.g., *China Releases Detained Human Rights Lawyer*, GUARDIAN, Apr. 29, 2011, <http://www.guardian.co.uk/world/2011/apr/29/china-releases-human-rights-lawyer>.

49. See Paul Eckert, *Swagger, Insecurity Feed China Crackdown: Dissident*, REUTERS, Jan. 18, 2012, <http://www.reuters.com/article/2012/01/18/us-china-usa-dissident-idUSTRE80H2DW20120118>.

50. See *World Report 2012: China*, HUM. RTS. WATCH, <http://hrw.org/world-report-2012/world-report-2012-china> (last visited Feb. 19, 2013).

51. Carl F. Minzner, *China’s Turn Against Law*, 59 AM. J. COMP. L. 935, 936–84 (2011).

52. *Id.* at 937–39.

53. See Michael Forsythe & Dan Hart, *Chinese Rights Activist Chen Guangcheng on Flight to U.S.*, BLOOMBERG, May 19, 2012, <http://www.bloomberg.com/news/2012-05-19/chinese-activist-guangcheng-en-route-to-u-s-state-dept-says.html>.

54. For an overview of the crackdown, see COMMITTEE TO SUPPORT CHINESE LAWYERS, LEGAL ADVOCACY AND THE 2011 CRACKDOWN IN CHINA: ADVERSITY, REPRESSION, AND RESILIENCE, (2011), available at <http://www.csclawyers.org/letters/Legal%20Advocacy%20and%20the%202011%20Crackdown%20in%20China.pdf>.

about the rule of law and diplomatically expressed concerns about the human rights violations that were occurring around them. I would like to relate that there was, at the very least, thoughtful, behind-the-scenes engagement. As the State Department and many NGOs have discovered, quiet advocacy that permits Chinese officials to save face can be an effective way to ameliorate persecution.⁵⁵

All I *can* report is the deans' response to a small NGO founded by Professor Cohen and others called “The Committee to Support Chinese Lawyers.”⁵⁶ This group, which is comprised of American lawyers, arose out of concerns about the increasing persecution of lawyers in China dating back at least to the time of the 2008 Olympics.⁵⁷ Professor Cohen, along with other members of the Committee, sent a letter to the ten deans about their visit.⁵⁸ In highly respectful language, the letter applauded their efforts to build academic ties to China.⁵⁹ Yet it also indicated that the deans might desire to be informed about the repression of lawyers and law professors then taking place.⁶⁰ The letter provided an appendix with reports and articles recounting the crackdown.⁶¹ It further noted that the Committee would be happy to meet with law school administrators to assist with the development of constructive ways in which their institutions might do something to improve the situation.⁶²

None of the law school deans replied – not even with a form letter. In my own experience, this failure to respond was reminiscent of the Law Society of Northern Ireland's reaction in the wake of Patrick Finucane's murder in 1989.⁶³ Patrick Finucane was a leading human

55. See, e.g., Jane Perlez & Michael Wines, *Nascent Deal Would Let Dissident from China Study in U.S.*, N.Y. TIMES, May 4, 2012, <http://www.nytimes.com/2012/05/05/world/asia/chen-guangcheng-study-abroad-china.html>.

56. *About Us*, COMMITTEE TO SUPPORT CHINESE LAW, <http://www.csclawyers.org/about/> (last visited Feb. 19, 2013).

57. *Id.*; *Introduction*, COMMITTEE TO SUPPORT CHINESE LAW., <http://www.csclawyers.org/cases/> (last visited Feb. 19, 2013).

58. Letter from Robert Hornick, Chair, Comm. to Support Chinese Lawyers, to Robert Post, Dean, Yale Law Sch. (Aug. 4, 2011) (on file with author). The same letter went to all the other deans of the self-described leading law schools, including the University of California, Berkeley, the University of Chicago, Georgetown University, the University of Michigan, the University of Pennsylvania, Stanford University, Temple University, and the University of Virginia.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. Robert Lindsay, *NI Law Society Refuses to Back UN Call for Inquiry into Lawyer's Murder*, LAWYER, July 4, 1998, www.thelawyer.com/ni-law-society-refuses-to-back-un-call-for-inquiry-into-lawyer0395-murder/91278.article.

rights lawyer who was gunned down after receiving threats because he represented unpopular nationalist clients.⁶⁴ A human rights NGO that I was working for approached the Law Society of Northern Ireland, the unofficial organization for solicitors, after Finucane's murder by a paramilitary group in the region. The Law Society of Northern Ireland did not provide support for the investigation; instead, it attempted to block the United Nations' call for inquiry.⁶⁵ Over the course of two decades, information revealed that U.K. security forces had colluded in the killing.⁶⁶ Just last year, Prime Minister David Cameron acknowledged and formally apologized for the government's role (even though he reneged on a commitment for an independent public inquiry).⁶⁷ In any event, for years the Law Society declined to condemn the killing of a fellow solicitor, let alone broach the subject of possible government involvement. At the time, their failure to do anything publically or privately was not just a lost opportunity; it also had the effect of putting their imprimatur on those who sought to send the message that lawyers in the region were not under threat. Since that time, history has not looked kindly on their failure.⁶⁸ The Committee still awaits a response from the top law school deans.⁶⁹

III. DOING MORE THAN NOTHING—OR AT LEAST MORE THAN TEACHING GLOBAL BUSINESS LAWYERS⁷⁰

What can be done to improve this less-than-heroic state of affairs? A good way to begin is by acknowledging that there is a problem instead of running away from it. After that, the next step would be to find applicable standards to uphold. When it comes to human rights law itself, there is actually not a great deal on point. Academic

64. Opinion, *Full Justice for Ulster Killings*, N.Y. TIMES, June 29, 2002, <http://www.nytimes.com/2002/06/29/opinion/full-justice-for-ulster-killings.html>.

65. Lindsay, *supra* note 63.

66. Peter Hain, *Pat Finucane's Death Is a Terrible Stain on Britain's Record in Northern Ireland*, GUARDIAN, Dec. 12, 2012, <http://www.guardian.co.uk/commentisfree/2012/dec/12/pat-finucane-death-stain-northern-ireland>.

67. Henry McDonald & Owen Bowcott, *David Cameron Admits "Shocking Levels of Collusion" in Pat Finucane Murder*, GUARDIAN, Dec. 12, 2012, <http://www.guardian.co.uk/uk/2012/dec/12/david-cameron-pat-finucane-murder>.

68. Nor at the time was it looked kindly upon. See LAWYERS COMM. FOR HUMAN RIGHTS, HUMAN RIGHTS AND LEGAL DEFENSE IN NORTHERN IRELAND (1993).

69. As this Article went to print, there had still been no response.

70. Cf. LL.M. Singapore: NYU@NUS—A Dual Master's Program for Global Business Lawyers, N.Y.U. SCH. OF LAW, <http://www.law.nyu.edu/llmjsd/llmsingapore/index.htm> (last visited Mar. 26, 2013) (describing N.Y.U.'s dual master's program that focuses on global business).

freedom can be bootstrapped to freedom of expression, but that falls far short of what is necessary to deal with many of the challenges described here.⁷¹ In any case, given that most U.S. law schools would not qualify as state actors, traditional human rights law would not apply to them.⁷²

What are other possibilities? Codes might provide one option. Private industry, often in conjunction with NGOs, has established self-regulating codes of conduct with varying levels of success. To take one example, the Fair Labor Association, a partnership of mainly apparel manufacturers and civil society groups, has promulgated a *Workplace Code of Conduct*.⁷³ Nothing exists, however, with regard to academic initiatives in repressive regimes. One superb group, the Scholars at Risk Network, which is dedicated to defending persecuted academics, did explore the possibility of a set of guidelines, yet these concentrated mainly on academic quality and equivalence.⁷⁴ That is, if a law school is going to establish a presence in another country, the level of instruction it should apply in that other country should be what it is in its home country. Such efforts are laudable, but they do not directly address the problem at hand.

Absent an applicable code, the task becomes creating one. The remainder of my remarks will focus on how law schools and universities might proceed once alerted to the dangers of setting up shop in a state with significant human rights issues.

A good place to start would be self-regulating codes for sectors that face similar challenges. One sector that does self-regulate, and is closely related to law schools, is law firms. Here the expectation might be that firms, which are for-profit entities, would demonstrate far less concern about human rights violations in the countries in which they do business, even when those violations affect fellow lawyers.⁷⁵ And to an extent this is true. Still, I am happy to report

71. See International Covenant on Civil and Political Rights art. 19, Dec. 16, 1966, S. TREATY DOC. NO. 95-20, 999 U.N.T.S. 171.

72. See Jean-Marie Kamatali, *The New Guiding Principles on Business and Human Rights' Contribution in Ending the Divisive Debate over Human Rights Responsibilities of Companies*, 20 CARDOZO J. INT'L & COMP. L. 437, 458–60 (2012) (discussing the traditional view that non-state actors are outside the jurisdiction of human rights law and the developing position that human rights law does in fact implicate non-state actors).

73. *Workplace Code of Conduct*, FAIR LABOR ASS'N, http://www.fairlabor.org/sites/default/files/fla_code_of_conduct.pdf (last visited Mar. 26, 2013).

74. See *Academic Freedom Workshops: Advocacy Curriculum*, SCHOLARS AT RISK NETWORK, http://scholarsatrisk.nyu.edu/Workshop/d_strategy_standards.php (last visited Mar. 26, 2013).

75. See generally Kelly Charles Crabb, *Providing Legal Services in Foreign Countries: Making Room for the American Attorney*, 83 COLUM. L. REV. 1767, 1788–1812 (1983) (proposing sample

that in one instance the New York City Bar Association has adopted a set of relevant principles.⁷⁶ As it happens, the principles are confined to China as a direct response to the 2011 lawyers crackdown that the American law deans ignored.⁷⁷ These principles refer to and are adapted from the *U.N. Basic Principles on the Role of Lawyers*,⁷⁸ which seek to provide a baseline for how states should guarantee the independence of the bar.⁷⁹ They also go somewhat further than proclaiming that the rule of law is a good thing.⁸⁰ The New York City Bar Association's Principles specifically commit its members to:

1. Express our support for the right of lawyers to zealously represent and defend their clients and to do so without being identified with their clients or their clients' causes as a result of that representation;
2. Promote the right of lawyers to practice law without harassment, intimidation, disbarment, detention, prosecution, or other forms of hindrance or abuse in response to lawyers' choices to defend or represent clients in asserting or defending their clients' rights under applicable law;
3. Defend the right of lawyers to voluntary freedom of association, to security of the person and to travel;
4. Work with governments and professional associations in the countries in which we practice to respect the right of all lawyers in those countries to represent their clients with the same degree of professional independence that we enjoy in our own countries; and
5. Promote the application of these Principles by other lawyers and businesses with whom we do business at home

regulatory guidelines designed to mitigate concerns about the role of American attorneys abroad, particularly with regard to a nation's political and cultural values).

76. See *Lawyers' Statement of Principles Regarding China*, N.Y.C. BAR ASS'N, <http://www.nycbar.org/pdf/report/uploads/20072195-LawyersStatmentofPrinciplesRegardingChina.pdf> (last visited Feb. 18, 2013).

77. *Id.* at 1.

78. *Id.*

79. *Basic Principles on the Role of Lawyers*, UNITED NATIONS HUM. RTS. (1990), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleofLawyers.aspx> (last visited May 5, 2013).

80. *Lawyers' Statement of Principles Regarding China*, *supra* note 76, at 1 ("Recognizing the critical role that lawyers play in promoting and protecting the rule of law, we therefore call upon lawyers everywhere to join us demanding that the Chinese government respect the basic right of Chinese lawyers to practice their profession free of government interference . . .").

and abroad.⁸¹

Beyond China, these guidelines could serve as the basis for similar principles for law schools and further create synergy between progressive bar associations and responsible academic institutions.

Such a code would ideally address several issues:

1. *Due diligence*

First, law schools and universities should be under a duty to undertake due diligence. That means investigating the human rights record of the country at issue so the law school or university leadership can proceed with its eyes open. As noted, even nations not considered authoritarian might reveal, on inspection, relevant human rights problems.⁸² To my knowledge, the Chinese government has never been involved in the killing of a lawyer—the U.K. government has.⁸³ Of course a due diligence requirement becomes that much greater when just a glance at the news should put anyone on notice that a particular regime is repressive. The other day, I was talking to a law school dean who had also been in China during the crack-down on lawyers. When queried about it, this particular dean professed ignorance that lawyers in China faced intimidation. I related this story to Sophie Richardson, China Director of Human Rights Watch. Her response: doesn't this person read *The New York Times*?

Due diligence, moreover, might even become institutionalized. Someone in a dean's or president's office might be made responsible for human rights compliance. A human rights program or clinic within a law school or university might also be able to perform that function. A dean's priority may often be making donors happy. But as those who have done advocacy work know, it always helps when a foreign ministry has a desk devoted to human rights obligations. In both government and in law school, a voice within an institution can make a difference. In any event, even as is, an assistant or secretary can, with a few mouse clicks, print out the State Department Country Reports on Human Rights Practices for a given nation.⁸⁴

81. *Lawyers' Statement of Principles Regarding China*, *supra* note 76.

82. *See supra* pp. 299–300.

83. Eamon Quinn, *Report Links U.K. Officials to '89 Murder*, WALL ST. J., Dec. 12, 2012, <http://online.wsj.com/article/SB10001424127887324481204578175583123887420.html>.

84. *See Human Rights Reports*, U.S. DEP'T OF STATE, <http://www.state.gov/j/drl/rls/hrrpt> (last visited Mar. 27, 2013).

2. Consider alternatives

Another option—and this is narrower, but it is one that relates to Yale—is: if there are alternatives, consider them. Suppose you are a law school or university and want to establish a significant footprint in a large, cosmopolitan Asian city that is a gateway to China and the region. Think about possible cosmopolitan Asian gateway cities, especially when the desire is access to China. The two obvious candidates are Singapore and Hong Kong.⁸⁵ Hong Kong has its imperfections, particularly with regard to democratic self-rule. But in terms of freedom of expression and academic freedom, Hong Kong is ahead of its rival.⁸⁶

Why the rush to Singapore? The Singapore government has aggressively courted American academic institutions with substantial subsidies.⁸⁷ But as Sir Thomas More might have said, at what price? For us in the United States, the situation raises a different challenge. In certain circumstances, there may be a choice between a regime with significant problems, particularly problems that bear on academic freedom and related rights, and a regime that does not but will offer students and faculty a similar experience. In that instance, the schools should at least consider the alternative. That does not appear to be happening today.

3. Do no harm

Next, academic institutions should commit to defend core values such as academic freedom. A fairly obvious danger arises when a regime pressures an institution to establish limits that reflect the

85. See Mahbubur Rahman, *Economy, Environment, Culture: Global Dreams by Two Asian Cities*, 4 INT'L J. ARCHITECTURAL RES. 20, 34–37 (2010) (discussing the concept of Asian cities as global cities through a comparison of Singapore and Hong Kong).

86. See JAN CURRIE ET AL., ACADEMIC FREEDOM IN HONG KONG 28 (2006) (explaining that Hong Kong has more freedom of speech rights than Singapore, and noting that academics interviewed found they had more freedom in Hong Kong than in Singapore). *But cf.* Vincent W. Lau, Note, *Post-1997 Hong Kong: Will Sufficient Educational Autonomy Remain to Safeguard Academic Freedom?*, 20 B.C. INT'L & COMP. L. REV. 187, 225–26 (1997) (discussing the return of sovereignty over Hong Kong to the People's Republic of China, and noting that the words found in the Basic Law provide for educational autonomy and academic freedom, but questioning whether the law will be enough to safeguard this academic freedom).

87. See Adele Yung & Yojana Sharma, *Demise of Branch Campuses Exposes Reliance on Government Subsidies*, U. WORLD NEWS, Jan. 19, 2013, <http://www.universityworldnews.com/article.php?story=20130117151151289> (“Singapore hosts 11 foreign branch campuses and has a number of joint degree partnerships with prestigious international institutions, often lured with generous Singapore government start-up loans and subsidies under its ‘Global Schoolhouse’ initiative started in 2002.”).

government’s own restrictions. Yet the more pernicious threat may be more subtle. Those whom I have spoken with in the human rights community express particular concern for what the writer Ian Roddie, in another context, calls “the preemptive cringe.”⁸⁸ You are a professor in your school’s program abroad. You know that if you have a certain kind of speaker, symposium, conference, or even course, it will embarrass your partners or anger the government. So you just refrain.

With these problems in mind, a further principle at least should be to refrain from facilitating human rights violations; that is, “do no harm.”⁸⁹ This is precisely the problem with Yale’s policies at its quasi campus. Restricting free speech and free association on school grounds is not merely violating the school’s mission statement; it is facilitating something that actually is recognized as a violation of international human rights law. In short, do no harm even if you are not going to do any good beyond ordinary instruction, as selfless as those who oversee ordinary instruction deem it to be.⁹⁰

4. *Promote the rule of law and fundamental rights*

Yet, law schools and universities can do considerable good beyond ordinary instruction. To be sure, they do good simply by doing what they do: teach, research, exchange, dialogue. Yet in a repressive state, that is not nearly enough. Nor should academics fool themselves into thinking that it is. The point applies with special force to programs that cater to the international “1%,” such as NYU’s business law program in Singapore.⁹¹ Beyond normal scholarly undertakings, institutions should commit to consciously thinking about how to promote basic rights—not just by being there and having one’s presence by itself be viewed as the ultimate benefit—but by thinking proactively about ways to constructively and diplomatically achieve this goal. One solution that law schools in par-

88. Ian C. Roddie, *The Preemptive Cringe*, 5 *PHYSIOLOGY* 38, 38 (1990), available at <http://physiologyonline.physiology.org/content/5/1/38.full.pdf+html>.

89. For an interesting discussion about the “do no harm” approach in the context of NGOs, see Upulee Dasanayake, *NGOs and the Globalization of Universal Human Rights: A Do No Harm Approach to Human Rights Advocacy* 13–16 (2008) (unpublished M.S. thesis, George Mason University), available at http://digilib.gmu.edu/dspace/bitstream/1920/3424/1/Dasanayake_Upulee.pdf.

90. *Id.* at 13.

91. See Noelle Esquire, *NYU Creates New Global Law Program in Singapore*, *VOICE AM.*, <http://www.voanews.com/content/a-13-2006-04-26-voa79/312515.html> (last updated Oct. 31, 2009).

ticular might consider would be public interest clinics. Before the current crackdown in China, a number of Chinese law schools had clinics designed for clients such as battered women, the poor, and the disabled.⁹² Sadly, these clinics have fallen victim to the recent crackdown as collateral damage. Still, many places allow space for initiatives that self-consciously promote the development of the rule of law and fundamental rights.

5. *Defend the defenders*

Finally, universities should take up and condemn violations where appropriate. Nowhere does this create thornier problems than in China.⁹³ For many academic institutions, self-interest, even survival, rightly dictates that the Chinese market must remain accessible.⁹⁴ More importantly, China presents the problem of whether saying something contrary to the regime's interests will make things better or worse for those one seeks to help.⁹⁵ I do not pretend to be a China expert, but rather come to the area as a human rights generalist. What to do? Do homework, read leading works, follow listservs and blogs, consult experts. In this regard, one vital resource concerning China for me has been Jerome Cohen at NYU, who is a master at intuiting when to press and when to pull back, including when to do so publically. To cite one especially high-profile success, Professor Cohen played an essential role in tense negotiations that brought the blind, self-taught legal activist Chen Guangcheng to the United States.⁹⁶ That said, it is important to acknowledge that even the most knowledgeable advocacy does not always work. As retaliation for Chen Guangcheng's escape from illegal house arrest, Chen's nephew, Chen Kegui, was "tried" and convicted for assault back in China because he physically resisted local government thugs who invaded his home and beat him and members of his family.⁹⁷ For the

92. COMMITTEE TO SUPPORT CHINESE LAWYERS, *supra* note 54 (discussing the dramatic increase in the number of lawyers, legal advocates, and activists subject to sanctions, including disappearances and torture, and the disabling effect this has on lawyers committed to public interest and human rights).

93. See discussion *supra* Part II.

94. See discussion *supra* Part II.

95. See COMMITTEE TO SUPPORT CHINESE LAWYERS, *supra* note 54.

96. See Jerome Cohen Advises Activist Lawyer Chen Guangchen in Negotiations with China, N.Y.U. SCH. OF L. NEWS, http://www.law.nyu.edu/news/JEROME_COHEN_CHEN_GUANGCHENG (last visited Mar. 27, 2013).

97. See Chen Kegui, Nephew of Chen Guangcheng, Sentenced to 39 Months in Prison After "Judicial Farce," COMMITTEE TO SUPPORT CHINESE LAW. (Nov. 29, 2012), <http://www>

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last several months, both Chen and Professor Cohen, with others, have attempted a soft, behind-the-scenes approach with some hope that it might work.⁹⁸ It did not, and the only option left was to go public.⁹⁹

The larger point applies anywhere. At times an academic institution may be confronted with an issue that requires someone to take a stand; failure to do anything may actually make the situation worse by encouraging further instances of repression. A response may present dangers in its own right, especially for the persons at risk. Those dangers, however, are not an excuse for doing nothing. As with any challenge, the point is to proceed as carefully and prudently as possible. The point is to try.

CONCLUSION

We can certainly debate about either my specific recommendations or even aspects of my assessments. What cannot be ignored is that law schools and universities operating in authoritarian regimes present growing problems that must be addressed. The first step in dealing with these problems is acknowledging that they exist.

.cslawyers.org/events/ [hereinafter *Kegui Sentenced*] (follow 2012-11-29 hyperlink); see also Chris Buckley, *Chinese Activist, Now in U.S., Says His Relatives Remain Under Surveillance*, N.Y. TIMES, Mar. 13, 2013, <http://www.nytimes.com/2013/03/14/world/asia/family-of-chinese-activist-chen-guangcheng-said-to-be-harassed.html>.

98. See *Kegui Sentenced*, *supra* note 97.

99. See *id.*