

The Cost of Self-Censorship in Dealing With China – a testimony for CECC hearing

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In December 2014 I was invited by the American Bar Association (ABA) to write a manuscript for a book to be titled “Darkness Before Dawn.” In it, I would describe the decade I spent engaged in human rights work in China, and what those experiences illustrate about the country’s politics, judicial system, society, and future.

But the formal offer with the ABA was soon rescinded. The reason, I was told by the executive director of ABA publishing, was because they were afraid to anger the Chinese government.

When “Chinese politics” is mentioned, most think of the factional struggles forever roiling Zhongnanhai, the headquarters of the Communist Party. But this is only part of the picture. The stories I’ve long sought to tell are otherwise: about the activists given heavy prison sentences for forming opposition political parties; about the human rights lawyers who’ve represented persecuted Christians, Falun Gong practitioners, Tibetans, and Uyghurs; about the rights defenders whose dogged activism helped to abolish the labor camp system. And then there are those who’ve worked against the one child birth control policy, forced demolitions, judicial misconduct, and environmental pollution, as well as the non-governmental organizations (NGOs) who have promoted democratic ideals, defended free speech, and pushed for greater gender equality.

I’m one of their number: for my activism I’ve been banned from teaching, been forced out of a job, had my passport confiscated, been disbarred from practicing law, and have even been jailed and tortured. All of us engaged in this work have paid an enormous price—but we’ve made progress. No understanding of contemporary China is complete without a thorough grasp of this community of Chinese activists. They’re the country’s hope for the future.

These were the ideas animating the manuscript proposal that was at first enthusiastically received by the ABA. It promised to be “an important and groundbreaking book,” my correspondent said. But the formal publishing contract we signed was soon reneged upon, with this explanation: “There is concern that we run the risk of upsetting the Chinese government by publishing your book, and because we have ABA commissions working in China there is fear that we would put them and their work at risk.”

I don’t want to single out the ABA. This is simply the latest example of the corrosive influence of the Chinese Communist Party on the West. I had the experience that my scheduled speech was cancelled for the last minute by an American university, the reason given to me was exactly the same one as ABA. It’s a crowded field: There are the Confucius Institutes and the Federations of Chinese Scholars and Students, both under the control of the Chinese government as they erode academic freedom on campuses in the United States. There’s Yahoo, who provided China’s public security forces with the personal information of Chinese political dissidents so authorities could

arrest and jail them. Facebook is flirting with the China market. And Twitter just hired a former Chinese military and security apparatchik to head their operations in China. “Red capital” has flooded the media markets in Hong Kong and Taiwan, and some Western journalists have been forced out of China or denied visas. Books have had key passages deemed sensitive deleted. And many Western scholars of China practice self-censorship—for perfectly understandable reasons: if their conclusions on a “sensitive” political topic anger the regime, they won’t get a visa, and their prestige, position, and funding will be jeopardized. Chinese and Tibetan activists living in San Francisco, London, Switzerland were attacked when participating in protests. Chinese activists, dissidents, publishers were kidnapped in Thailand or Burma and sent back to China, Some of them hold Swedish or UK passport.

The ABA is just one of the many major Western institutions attempting to promote change in China—on the Communist Party’s terms. Alongside the ABA’s Rule of Law Initiative, there’s the U.S.-China Human Rights Dialogue, the EU-China Human Rights Dialogue, training programs for Chinese judges, prosecutors, and police, and exchange programs with universities and the official lawyers’ associations. These organizations want their programs to be effective—and so they carefully avoid a great many issues that might endanger their success. The list is long: the persecution of Falun Gong, the Tiananmen Square massacre in 1989, the Party’s policies in Tibet and Xinjiang, dissidents, “radical” human rights lawyers, and street activists. There is a constant guessing game about which way the political winds in Beijing are blowing. And so without realizing it, Western institutions end up helping the Chinese government to silence and marginalize the individuals and groups it finds the most troublesome. Self-censorship has become instinctive, and now characterizes the very basis of their interactions with the regime.

For the quiet sense of guilt that self-censorship engenders, there is a tempting comfort in the idea that: “Well, in the end we’re still creating more space for the rule of law and human rights.”

But the reality of foreign assistance has resulted in an unintended consequence. Nearly all the major program funding has ended up in the pockets of government departments, Government-Organized Nongovernmental Organizations (GONGOs), and scholars with state ties. Resources meant to support the rule of law and human rights have made their way into the hands of those whose job it is trample upon human rights: courts, Procuratorates, public security departments, the official lawyers association, and Party-affiliated mass organizations like the All-China Women’s Federation.

Americans here are guilty of the classic error of mirror-imaging: projecting onto China what is familiar to them. The ABA might imagine, for instance, that the All China Lawyers Association (ACLA) is their professional counterpart. This would be a deep misunderstanding. My book discusses the extensive efforts by rights defense lawyers in Beijing to lobby for free elections for key positions in the ACLA, and how the attempts were shut down and those engaged in them punished. ACLA, and all Bar Associations in China, are simply part of the government’s apparatus of control: it has disbarred numerous rights lawyers on the orders of the Party, and has been a proactive accomplice in drafting policies that prevent lawyers from taking on political cases. Helping these GONGOs is worse than doing nothing.

The same can be said for the training programs directed at police, judges, and prosecutors: Western organizations are inclined to think that miscarriages of justice must simply be a matter of insufficient professional training. Wrong again. The primary reason for abuses of justice in China is because the judicial system is an instrument of Party control, where political cadres directly and arbitrarily interfere in legal cases.

Foreign organizations are thus limited to working in the apolitical safe zones the regime tacitly permits. These include, for instance, environmental protection, better treatment for handicapped people, women's rights, HIV/AIDS, and education. Even in these sectors though, they're still treated as "hostile foreign forces." In the past few years, in particular, the regime's realm of permissiveness has rapidly constricted. And so we see that attempts to please the Communist Party with mild-mannered human rights promotion haven't brought about any concessions on the part of the authorities. The soon-to-be-passed Foreign NGO Management Law will further narrow the space in which these organizations can operate.

Rule of law and human rights dialogues, meanwhile, have mostly become a means for the Party to deflect substantive demands to change its human rights practices. Dialogues end with vague remarks about the importance of dialogue and understanding and the ongoing nature of the reform process. Yet rights defenders and journalists are arrested in still greater numbers. Torture, forced disappearances, detention in black jails, and religious persecution haven't decreased. When the Chinese activist Cao Shunli attempted to participate in the UN Human Rights Council's Universal Periodic Review, she was tortured to death. Other recent prominent cases include that of Tenzin Delek Rinpoche, a Tibetan monk, who died in jail in July 2015, and Ilham Tohti, a moderate Uyghur scholar, who was sentenced to life imprisonment last year. Both were peaceful activists. And then there is Nobel Peace Prize laureate Liu Xiaobo, who is still serving his 11 year sentence in prison.

Because the Party has already fixed the realm of the permissible, foreign organizations feel that they're limited to working only with official agencies and scholars. But those who need help the most, who deserve it the most, and who've taken the greatest risks for China's future, are excluded before a conversation can even begin.

If refusing to publish my book was the price to pay for genuinely effective work by ABA to promote the rule of law in China, then I would happily tear the contract up myself. But the opposite is true.

The permissive attitude and mild policies on China by international NGOs is of a piece with the West's general appeasement of China's dictatorship. It's an approach based on short-sighted interests, and it undermines the sanctity of universal values. Not only do these policies fail to promote human rights and the rule of law in China, but the relentless self-censorship has come to erode the moral prestige and values that are at the foundation of free societies. It's high time for a new approach.