

AN AMERICAN LEGAL SCHOLAR RETURNS TO CHINA

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[A] INTRODUCTION

Last month, I returned home from a three-week academic trip to China. At almost any other point in the past 40 years, this would be a thoroughly unremarkable statement for me or any other American scholar to make. No longer.

Until the Covid-19 pandemic, robust scholarly exchange was a hallmark and sometime ballast of United States (US)–China relations. That had been the case since the earliest days of normalization of relations in the late 1970s, even through the crisis of 1989 (Southern 1989). Since my own first visit to China for language study in the summer of 1995, I have made academic research of Chinese law the centrepiece of my professional life, returning to China over the ensuing decades more times than I can count, for all manner of visits, sometimes as many as three or four times a year. Until quite recently, it never would have occurred to me that my return from a trip to China might prompt any wider notice or special grounds for reflection.

For scholars like myself, who have prioritized on-the-ground research and exchange in our



*Neysun Mahboubi visiting
with renowned legal scholar
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study of China, the past few years since the onset of the pandemic (and associated travel restrictions) have been very difficult to bear, akin to being deprived of oxygen. As recently as just this past December, the resumption of our travel to China—for the express purpose of research and exchange—seemed distressingly far off to many of us, who were not willing to accept the strictures and vagaries of China’s “Zero-Covid” policies.

The sudden dismantling of those policies following the “white paper” protests (Zhu & Ors 2023) opened a vista as welcome as it was unexpected, and I proceeded to make travel plans for as soon as it was practicable.

Returning to China in June 2023 did not put me at the very front of the line of returning US scholars. Others were making their return visits around the same time as me, while still more were slated to go in the following weeks and months. Still, we remain in the early days of resumption of academic travel to China—and renewal of people-to-people exchange more generally—with understandable concerns about not only cost but also safety clearly paramount for many (Jakes & Ors 2021). (And of course there are well-founded reciprocal concerns among our Chinese colleagues too, as they contemplate their own return travel to the US.) The overall picture of US—China scholarly exchange remains just a pale shadow of its former self, the scope and scale of exchange as late as 2019 incredible to contemplate today.

[B] THE EFFECT OF THE COVID-19 PANDEMIC

By 2019, mounting tensions between the US and China already were in sharp relief, of course, as was the spillover into the realm of scholarly exchange. But as tumultuous as the relationship between the two countries had grown by then, various dynamics unleashed by the Covid-19 pandemic have made things markedly worse. This dismal landscape is what sets the scene for any considerations of resuming academic travel and exchange now, propelling the safety concerns that weigh heavily on US and Chinese scholars alike. Even a few cases of scholars being subjected to intrusive questioning or otherwise harassed on arrival at the border—the accounts well disseminated by word-of-mouth among the relevant communities—have had a significant and persistent chilling effect.

Early in the Covid-19 pandemic, when barriers to travel to China had become clear but their full duration not yet apparent, I grappled with the threat to academic work on China that was already visible, laying out my position with as much force as I could then muster:

Precisely because China remains so much a closed and opaque target for academic inquiry, there simply exists no plausible alternative to the on-the-ground research US scholars have been able to conduct, and hone with ever-greater sophistication, in recent decades. ... So, once COVID-19 travel restrictions are lifted, and as long as visas remain available, US-based scholars of China will have no choice but to return there and continue all the research projects that have fallen into abeyance since the onset of the pandemic, however fraught the circumstances and whatever the risks (Mahboubi 2020).

At more or less the same level of rhetorical intensity, this has been my consistent stated view in all the years since, and really the sole point in the general arena of US–China relations on which I have staked out a sharply maximalist position. So when the opportunity to return finally arose, I felt a special responsibility to do so—not just for the benefit of my own academic research, but also to follow through on my rhetoric of the past few years, and to model resumption of in-person exchange for still hesitant colleagues in both the US and China.

To be sure, as my actual departure neared, possible risks crept to mind. Even as Covid controls have dissipated and foreigners encouraged to return, the various ways in which Chinese security officials—much empowered over the course of the pandemic—made their heightened scrutiny felt in recent months (Wei 2023) have escaped no Western scholar’s attention. I am not immune to the fears that drive many colleagues’ ongoing reluctance to travel to China and am certainly respectful of their difficult cost/benefit analysis. Having resolved to make the trip, notwithstanding, I was relieved to find that none of my concerns were met. From start to finish, my visit was entirely free of hassle, and exchanges with longtime friends and interlocutors—who seemed genuinely delighted to welcome me back to China—proved as open and frank as ever. This is not to suggest that all returning scholars will necessarily encounter the same, but just to enter my own experience into the cumulative record.

[C] OBSERVATIONS FROM THE GROUND LEVEL IN CHINA

So, against this backdrop, what did I learn from my trip? I’m grateful to have had the chance to share some reflections already on the *Sinica Podcast* (2023), but let me here elaborate on, and add to, some of the points I discussed with Kaiser Kuo in that episode.

First and foremost, as happily noted above, I found Chinese colleagues eager to re-engage, after almost four years of effective separation. Not



Neysun Mahboubi together with (recently retired) Peking University Law Professor He Weifang 贺卫方.

of spirit with which I was greeted, at every turn, served as a welcome reminder of the enduring strength of ties forged during the past 40 years of US–China engagement (Campbell & Ratner 2018), despite the common trope that such engagement had “failed”.

That said, the general theme of fraught US–China relations was indeed omnipresent throughout all my interactions, prominent even in contexts where the bilateral relationship would rarely (if at all) have come up in the past. For most of my professional life relating to China, the focus of my work generally and my China travel in particular has been the narrow academic field of Chinese administrative law. My discussions in China, over the decades, have tended to focus on relatively technical questions like the scope of judicial review under China’s Administrative Litigation Law, or the operational meaning of public participation requirements for Chinese agency rulemaking.

In recent years, amidst downward-spiralling US–China relations, I have felt compelled to tackle this subject more directly (see [The Penn Project on the Future of US–China Relations](#)), so I did anticipate for US–China relations to be a key feature of some discussions on this visit. Even so, I was taken aback by the degree to which concern over (the poor state of) the relationship came up in just about every conversation. No corner of China studies, I fear, will be unaffected by these shadows.

Deeper anxieties were often mentioned too. China’s strict response to the Covid-19 pandemic, and then sudden relaxation of controls, have left emotional scars that remain close to the surface for many. Worries over the tightening economic outlook are clearly pervasive. Most of all,

only private discussions but also public dialogues (around lectures I delivered in Beijing and Shanghai) were about as robust and wide-ranging as I could have hoped. Given the precipitous decline in US–China relations over the past few years, I would not have been shocked to find personal dynamics negatively impacted as well. That they were not—and in fact much the opposite!—helped to confirm the significance I had attached to this particular trip, lending a real emotional weight to my visit. More broadly, the generosity

among the scholarly and professional communities I know best, there was palpable dismay over the ongoing contraction of political space under Xi Jinping 习近平, coupled with uncertainty as to where the “red lines” are today (and where they will be in the future). I was heartened to find some examples of ongoing willingness to test the boundaries—to use whatever space remains to somehow advance legal and policy arguments critical of (or at least not fully aligned with) dominant political trends. But many Chinese colleagues who have displayed similar instincts in the past have grown more circumspect of late, turning their attention to matters well within the zone of perceived safety, or simply just focusing instead on their own personal lives and interests. This is to say nothing, of course, about those who have more affirmatively taken up the mantle of Xi Jinping’s regime.

[D] THE CASE FOR RESUMING ACADEMIC EXCHANGE

Realistically, we can expect US–China tensions and (in some ways corresponding) Chinese political restrictions to persist and even deepen for the foreseeable future.

Against this backdrop, I well understand why there is so much pessimism about the immediate future of scholarly exchange between our two countries. Still, I remain undaunted—and, in fact, am newly energized—in calling on scholars on both sides of the Pacific to bolster our efforts to restart the engines of on-the-ground research and exchange that have been idling these past four years. What left the deepest impression, from all my experiences on this trip, was the powerful reminder of the intrinsic and vital benefits which this mode of inquiry brings to our academic work. (I have no doubt many other American scholars who returned to China this summer feel the same way.) Just from a knowledge standpoint, the immense costs of what we lost over the course of the pandemic never have been so obvious, the need to prevent further losses never more urgent.

A more fulsome resumption of scholarly exchange, across the board, can yield additional benefits as well. Like other channels of dialogue—all much impaired over the past few years—it could offer at least a moderate stabilizing influence (Kennedy & Wang 2023) over the freefall in US–China relations, if only by restoring some degree of cognitive empathy (Wang 2023) to now hardened perspectives.

More ambitiously, it also could play a role in pushing back against closing political boundaries in China. The hydraulics of scholarly

exchange have long served as a tool for reformist Chinese intellectuals to press for greater liberalization. More conservative, security-minded Party authorities likely anticipate this, hence China's own mixed messaging on the resumption of exchange (which includes revising the Anti-Espionage Law to dramatically expand its coverage) (Agence France-Presse in Beijing 2023). But at a moment of growing concern over the scarcity of foreigners visiting China—and the not-unrelated state of the Chinese economy more generally—there is a distinct opening for American scholars to return and re-engage with our Chinese colleagues. We should seize this opportunity.

[E] A CALL TO ACTION

For us to do so effectively, more will be required than from individual scholars alone. Of course, we will need the full support and encouragement of our respective academic institutions—many of which have begun, in their natural caution, to reconsider longstanding frameworks and pathways of exchange. It would help as well for our own government, which now tends to focus almost exclusively on high-level communications (Davis 2023), to better demonstrate that it takes seriously its recent statements endorsing the revitalization of academic exchange (Miller 2023), alongside other forms of people-to-people exchange generally.

This must include greater attention to the treatment of visiting Chinese students and scholars in the US. It is hardly “whataboutism” to note that both countries have dampened enthusiasm for academic exchange by confronting a non-trivial number of students and scholars with visa delays, visa denials, and border harassment. If anything, the problem has been more acute from our side of late (Feng 2023). Restoring the hard logistics of exchange (fellowships, funding, flights) is an important precondition too, of course, but probably insufficient to drive up interest so long as the US and China remain locked in this contest of mutual intimidation.

Ideally, it also would be possible to carve out some more room in US popular discourse about China (and vice versa) for affirming the value of scholarly exchange. This may be a tall order, for multiple reasons. In



Neysun Mahboubi speaking at Shanghai Jiaotong University Law School, at the invitation of Professor Ji Weidong 季卫东.

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the US, it remains good politics, from either side of the aisle, to press an unrelentingly tough line on China (Philbrick 2023). Occasional carve-outs for shared challenges on issues like health and climate are mostly pro-forma, and in any case often dismissed.¹ Proponents of any form of engagement carry a heavy burden of persuasion, including on whether such engagement succeeded in the past, but especially on whether it can make any significant difference now or in the future. In China, anti-Western rhetoric from the very top (Palmer 2023), however sometimes calibrated, does enjoy a sizeable receptive audience not only among the general public, but also (it must be said) across a range of intellectuals.

American and Chinese scholars who wish to push back against these wider currents have to think very carefully about how to make the best case(s) for academic exchange within their respective environments—and how to ensure that the contours of whatever exchanges we are able to resuscitate can be the most productive given these new complexities on every side.

This will take a lot of work, somewhat beyond our core skill set, conditioning, and incentives as academics. But I suspect there is little to no alternative if we want to preserve, much less strengthen, fields of inquiry and learning about China built up over the past 40 years. In many respects, the present moment recalls the early days of constructing US–China scholarly exchange in the aftermath of the Cultural Revolution (Shambaugh 2023). It’s hard to imagine any less broad-mindedness and ingenuity than was applied then, by American and Chinese scholars of that generation, will be necessary today.

[F] THE ROAD AHEAD ...

My last night in Beijing, at dinner with some of my closest friends from the Chinese legal community, whom I’ve known for almost 30 years, we debated whether the current landscape for scholarly exchange—informed by all the reciprocal visits this summer, including my own—reflects the beginning of the end of a dark period, or just the end of the beginning. I may be cautiously optimistic of the former, but I am realistic enough to acknowledge the latter as a real possibility too. We shall find out soon enough.

¹ When this essay was originally published in *The China Project* in August 2023, there looked to be a distinct possibility that the Science and Technology Cooperation Agreement first signed between the two countries in 1979, and renewed every five years since, could be allowed to lapse (Hao & Hua 2023). Ultimately, the Agreement was renewed for another six months, but as of this republication, the long-term future of the Agreement remains in some doubt (Razdan 2023)

In the meantime, I am planning to return to China again in the fall, holding out hope that my trip's significance will be muted by then, against the backdrop of the ordinary and routine.

About the author

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Legislation, Regulations and Rules

Administrative Litigation Law

Anti-Espionage Law