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Roundtable Discussion

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Joseph W. Dellapenna, Laurelyn Douglas, Ted Hagelin, Edwin L.-C. Lai, Harold G. Maier, Yu Ping, John M. Rogers, Ying J. Rogers, and Peter Wesley-Smith

Roundtable Discussion

Saturday, March 29, 1997
Vanderbilt University School of Law
Nashville, Tennessee

*The Symposium panelists participating in this discussion included
Professor Joseph W. Dellapenna, Professor Ted Hagelin,
Professor Edwin L.-C. Lai, Professor Harold G. Maier,*
Mr. Yu Ping, Professor John M. Rogers,**
Ms. Ying Juan Rogers,*** and
Professor Peter Wesley-Smith.*****

Ms. Laurelyn Douglas:*****

I want to welcome back our distinguished panelists and welcome you to the roundtable, which we hope will be an informal opportunity to ask questions and review some of the issues presented during the sessions yesterday. I also encourage students who might be participating in research on this topic to speak up.

Professor Harold G. Maier:

This is going to be informal, and that's the best thing about sessions like this. I'll help us get started, but I expect the discussion will soon carry itself.

Those of you who were here for yesterday's sessions may recall that I suggested what we are discussing is

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** John M. Rogers is the Brown, Todd & Heyburn Professor of Law at the University of Kentucky College of Law. He is the author of *Anticipating Hong Kong's Constitution from a U.S. Legal Perspective*, which appears in the May 1997 issue of the *Journal*.

*** Ying Juan Rogers is a Trade Consultant and Proprietor of Shadeland East International in Lexington, Kentucky. Ms. Rogers was a featured speaker at the Symposium.

**** Peter Wesley-Smith is a Professor of Law at the University of Hong Kong. He is the author of *The Future of Hong Kong: Not What It Used to Be*, which appears in the May 1997 issue of the *Journal*.

***** Laurelyn Douglas, the 1996-97 Executive Symposium Editor of the *Journal*, introduced the panelists for the roundtable discussion.

something that is almost purely speculative during this symposium. We certainly know something of the history of the past. But even that, I think, is not as well understood, at least in the United States and, perhaps in the Western Hemisphere in general, as it could be.

But what we are trying to do in this meeting is to predict what Hong Kong is going to become. One thing of which we can be fairly confident is that we can't know now what Hong Kong will become.

Yet speculating is often worthwhile, and so this morning I've asked Peter [Wesley-Smith]—and I gave him two minutes' warning—to continue what he had done at the outset of yesterday's sessions. You'll remember that he described a history of the relationship among Hong Kong, various treaties, and what is now the People's Republic of China (hereinafter P.R.C.).

I've asked Peter if he would be willing to begin today's session by giving a projection of what he sees as the future of Hong Kong and the People's Republic of China for the next twenty to twenty-five years. I expect the other panelists will get started from that, and then we'll get audience members involved as well.

Professor Peter Wesley-Smith:

I think the first thing to say is that a historian should never try to predict the future.

I think the usual assumption by most people is that Hong Kong in terms of internal politics and domestic legal affairs will become very much like Singapore. For those who know Singapore, this might be a rather distressing prognostication. Singapore, of course, is in some sense formally a democratic system, but in practice is not democratic at all. It has a very tough government and is a "rugged

society," where the leaders of the People's Action Party suppress dissent in a very repressive manner and use the legal system to achieve such ends.

And I think the Chinese government has been very impressed with the Singapore model. They were very impressed with the Hong Kong colonial model. And, indeed, when they started off talking and thinking about the future of Hong Kong, what they initially intended to do was to simply cross out the "United Kingdom" where it appeared and replace it with the "People's Republic of China." The appeal of the Hong Kong model to the P.R.C. is that Hong Kong had a system which guaranteed imperial authority, with virtually no democratic institutions at all, or any limitation upon the autocratic executive power of the Hong Kong government.

But that wasn't possible as it turned out. The Basic Law is a much more liberal document. But I think the P.R.C. is intending that the Basic Law be administered as far as possible in an autocratic fashion so that Hong Kong will continue to be a hot-bed of inequities and perform its role in business and international trade, not only for its internal benefit but for the benefit of China. But Hong Kong won't in any sense become genuinely democratic. There will be some slight democratization as time goes on, but very, very little, with much the same kind of attitude towards human rights.

The one point which I didn't think was made adequately yesterday was that at least there is the institutional protection in Hong Kong of an independent judiciary. The great test will be whether that judiciary can make the Basic Law work as a document which tends to restrict the authority of governments. In Singapore, I don't

think that's so: there isn't a history or appearance of judicial autonomy. I believe even to mention the words "compliant judiciary" is to cause a great problem. But I think in Hong Kong it will be quite some time, if ever, before the judiciary becomes completely compliant.

The only major difference, I think, between the Hong Kong and Singapore models is that Singapore does not have the People's Republic next door. So the difference will be that there is some uneasy relationship between Hong Kong and the P.R.C. The P.R.C. obviously intends to exercise a considerable role, despite the purpose of the Basic Law being to provide something like a "Chinese wall" in a sense between Hong Kong and the Central People's Government. But I don't think any realist in Hong Kong expects that those kinds of constitutional guarantees will, in fact, work very successfully in practice.

Just one example: the Chief Executive designate, Mr. Tung Chee-hwa, was apparently chosen by a selection committee, which was composed of Hong Kong residents. In effect, though, he was chosen by the Chinese side. Although there was an election and there were a dozen candidates, four of whom were taken seriously, it nonetheless became very clear that China had chosen Mr. Tung Chee-hwa. They had chosen him probably fifteen years ago when they provided something like a hundred million U.S. dollars to rescue his shipping company. He was very much Peking's man, and so he was duly selected.

Tung Chee-hwa is quite an impressive man in many respects. He was a member of Governor Patten's Executive Council, so he has links with

the current system. The present question is, to what degree is he going to be independent of the P.R.C. and to what degree is he going to promote the idea of a high degree of autonomy? One particularly important area where this issue is raised is in regard to the appointment of the Chief Justice for the Special Administrative Region.

Currently, there are two candidates—not quite the word one would think of for a top post like that, at least, not in the British system, although maybe it's appropriate here, where there are elections for judges—for Chief Justice. One of them has the respect of the entire legal profession and is very highly regarded generally, and who everyone thinks would be an excellent Chief Justice, and he's likely to have the integrity and courage that are perhaps needed in the judiciary in this transitional period.

The other candidate is a sitting member of the Court of Appeal. He's very British in demeanor and manner. He's married to a non-Chinese woman. He is Chinese, as is the other candidate. But this second candidate has always been seen as very British and very different from his sister, Liu Yu-chu, who is a total—well, she's an unguided missile, according to the Chinese. But she's traditionally been a thorn in the side of the colonial administration. Not unintelligent, but very unpredictable, and seen as very left wing. She's a member of the National People's Congress. [Ms. Liu has since died.] And her brother Benjamin Liu has been seen as a contrast, the British side of the family. And yet, now he is openly campaigning to be Chief Justice, and apparently elements of the Chinese government want him to be appointed. They don't trust the other candidate, because he is seen as too independent.

Andrew Li, the other candidate, was on the Executive Council with Tung Chee-hwa. They are close friends. Apparently Tung Chee-hwa has great respect for him and wants to appoint him. But the appointment has not yet been made, although one would have expected it to have been made by now. And the inside information, the accuracy of which I can't guarantee, is that there's a real battle going on. And that if Andrew Li is appointed Chief Justice, then that would be some indication that Tung Chee-hwa is prepared to stand up to the Chinese side, and the Chinese side is prepared to give in or at least to be flexible about this issue.

And if Li were to be Chief Justice, then I think that would greatly strengthen the hopes that the judiciary, at least in the first ten years, will be impartial and full of integrity, and will provide, I think, honest interpretations of the Basic Law and the laws to ensure a high degree of autonomy for Hong Kong. [Mr. Andrew Li was subsequently appointed Chief Justice of the Hong Kong Court of Final Appeal.]

I'll just finish in regards to predictions of a statement by Ducey and Pious on Tommy Goth: "Prediction is always extremely difficult, particularly in regards to the future."

Professor Maier:

Does anyone have any comments?

Professor John M. Rogers:

Let me mention in more detail the dispute over the Provisional Legislature. The Joint Declaration of 1984 called for the creation of at least a partially-elected legislature. And some of the details were spelled out in the Basic Law, when it was finally adopted in 1990. That Basic Law calls for a sixty-member Legislative Council, twenty of whom are elected from single member

constituencies in the fashion of elections with which we are most familiar in the United States. Thirty of the sixty are elected from what are called functional-constituency elections, and the remaining ten of them are elected by an electoral commission.

That was the model that was followed for the 1995 elections, which the Chinese found so objectionable. Now, the Chinese can certainly object that they—rather than the British Electoral Commission—should have the electoral commission that appoints the ten: that objection is easy to see. The Chinese could object that the functional constituencies were divided improperly, and I believe they have objected to that. As for functional constituencies, they theoretically give members of various professions or groups in the Hong Kong workforce a voice in the legislature. For example, the legal profession gets to elect or choose a member of the Legislative Council. Similarly, various other professional groups elect members, the workers' group, and so on. But the effect of the representation can be numerically disproportionate. Indeed, the legal profession may be the smallest group. You know, if you have six million people total in the population, and you have twenty representatives chosen by the single member constituency method, then each one of those twenty represents approximately 300,000 people. Yet there's one person elected under the functional-constituency method to represent the legal profession consisting of most solicitors and barristers, but that's a total of less than 5000 people. So already the demographics can skew the results and expectations of democratic processes.

All the same, it's hard to see how the Chinese could object to the twenty

elected members, but as of June 30th the whole Legislative Council will, effectively, be wiped out. In the meantime, the Chinese have essentially appointed a provisional legislature of sixty people, who represent—supposedly—the same sort of distribution. With regard to representatives selected by single-member constituencies, there are certainly a substantial number of cases where the person who was removed from office was then replaced by a candidate who lost in the original election process. Now that's what passes for democracy as the Chinese Government understands it and has given rise to the current dispute about the legality of the legislature.

It's also important to understand that there is a working majority in the existing Legislative Council—not a hundred percent obviously, but a working majority nonetheless, in the existing legislative counsel—that is pro-democracy. Now, had the legislature been elected entirely by single member constituencies in 1995, it would have been overwhelmingly pro-democracy—at least given the clear voting patterns—because the democratic group got about eighty-five percent of the vote. But the legislature is not elected on democratic principle. Further, some of the members of the democratic group defected after the Legislative Council began meeting. As a result, the actual breakdown is something like twenty-six pro-democracy out of sixty. And this is what the Chinese have found to be unacceptable. So they've replaced it with a provisional legislature which has no explicit basis in law, let's put it that way. As I mentioned yesterday, both the Law Society and the Bar Association in Hong Kong have issued a report saying that in their opinion it's illegal.

The differences [between the two reports] are simply in the nuances as to how they describe the extent of the provisional legislature's illegality and how it might best be cured. This event and the report itself seem to be of significant portent, definitely something to which attention should be paid, especially if—to borrow a phrase Peter [Wesley-Smith] used yesterday—there are going to be document fetishists, then they'd better look and see how that document [the Basic Law] has already been treated.

Professor Maier:

Peter [Wesley-Smith] and John [Rogers], thank you. I want to say again, if any of the audience members have questions you'd like to raise, please do so. The purpose of this session is to get everybody involved. We'd rather not just sit here and talk at you, though we will, we can, we could talk forever. But we'd like to get you involved, so if you have any comments, please feel free to make them.

First, though, I want to ask other members of the panel if they wish to comment on the remarks by Peter and John this morning.

Professor Ted Hagelin:

I'll certainly play devil's advocate for a moment, although I pretty much agree with the comments made so far, at least in the short run. But I do think it is important to look at this situation in a bigger context, and that's this: no nation in modern history, other than a nation that has been defeated and forced to change, has undergone such a dramatic transformation as China in the past twenty-five years. What China has accomplished really is remarkable.

Another part of the context that we haven't really raised, but which I do think is important, is that China will never look like the United States; that's

just not going to happen. It will be distinctly Chinese. But I think one of the worthwhile exercises through this is to reflect a bit on the United States. We wag a finger at China in the United States, which is not the way to get anything done over there, about improving their criminal justice system. And the Chinese are then fond of reminding us about the Rodney King trial and the O.J. Simpson trial, and they say, "If that's what you mean about a criminal justice system, no thank you." We are continually at the Chinese about patent law reform. The truth of the matter today is that, in the U.S., patent litigation is a marketing strategy. Companies use litigation to thwart competitors. And the Chinese say, "If that's what you mean by patent law reform, no thank you."

So, I do think we need to look at ourselves in the mirror. Plus, we need to note that China did not embark on these radical free market reforms because they had an epiphany in Beijing. China's leadership embarked on these free market reforms because the standard of living throughout the Mao period was steadily declining. China realized that only foreign investment and free market reform could improve the standard of living and sustain the Communist party.

China does see the twenty-first century as *its* century, and it sees itself as now truly moving to center-stage in the world. How far the government is willing to go, very pragmatically, to achieve that center-stage position, no one knows. They may well embrace free elections, if it does allow China to assume what the Chinese leadership believes is its rightful role in the future in the world.

In the short run, yes, I do think there are going to be problems. But I

think it is very difficult to look down the line in the long run without at least considering a very different kind of scenario.

Professor Maier: This is pragmatism we're looking at.

Professor Hagelin: I think the most outstanding feature of China today is its pragmatism.

Professor Maier: Yes.

Ms. Ying Juan Rogers: Since I'm not a lawyer, I won't get into details about the law. I have a different view of the future of Hong Kong under the law because I was born in China. I think the Chinese government has to figure out how to deal with the pressing issues of concern to them. If Hong Kong's relative autonomy makes China worried, then China may seek to relocate the financial center away from Hong Kong, or maybe even attempt to move the legal system into Shanghai over the next five or ten years. They may think they can still control the financial center and its assets.

The idea may be just to move the big center from Hong Kong to Shanghai, and to make Shanghai a financial center just as Hong Kong is now. Then they'll gradually just replace officials of high rank in Hong Kong with those from mainland China. They can replace the directors of a university, putting in Chinese citizens instead of British citizens, or in the legal system, they may even replace a Hong Kong or British judge with a judge from mainland China.

If the Chinese proceed this way, then in five to ten years, they could gradually integrate Hong Kong into the mainland Chinese economic and legal

system. So I'm not sure that Hong Kong will become, as Peter was suggesting earlier, really like the Singapore model. One will be more capitalist, while the other will really be more communist, in nature.

Professor Maier:

Is it your impression that the underlying purpose for moving the financial center from Hong Kong to Shanghai would be to lessen the probability or the difficulties associated with potential protests against Chinese policies in Hong Kong, or to reduce the likelihood of such protests?

Ms. Rogers:

Yes, but of course it won't be achieved all in one day; instead it would be a gradual pace of integration, until eventually—in about ten years—Shanghai displaces or at least becomes equal to what Hong Kong is now as a financial center. And Hong Kong won't really be "Hong Kong" anymore, at least as it's thought of now; it will be "China."

So in some ways, it may be pointless to talk about which legal system or model will be dominant, although I don't think many people believe that at the moment. It won't be easy for China to switch much of the transactional emphasis to Shanghai, because it's not currently as automated as Hong Kong. Yet, I think that's China's goal, that in the end that's what they're going to do. So the importance of Hong Kong's legal system may become immaterial: it will just become China's.

Professor Maier:

There's a question related to the stability of Hong Kong's role as financial center from a gentlemen in the audience? Sir?

Audience Participant 1:

I'm curious about the issue of monetary conversions and also the

tradeability of various market shares, because it seems like anything less than full convertibility would create some tremendous arbitrage opportunities within the market itself, possibly setting it up for quite a crash in the next year or so. Could the panelists comment on the status of converting RenMinBi to Hong Kong dollars, as well as the various types of shares in the "Chinese" market and the limits on who can buy and sell these shares?

Professor Hagelin:

China keeps talking about floating the RenMinBi, but they've not yet allowed it to float freely in the sphere of the international currency market. The prospect of doing so presents a very big problem for China. If China were to allow it to float, it would be valued somewhere between thirty-five and forty percent, partly because an awful lot of the Bank of China's loan assets are involved in dinosaur companies making things that nobody wants to buy. That's a serious problem. Plus, one of the risks, really the primary risk, is the extensive trade going on between Hong Kong and China with the Hong Kong dollar, which *does* float and is a very, very strong currency and the RenMinBi, which does not.

In terms of the B shares, those shares trade frequently. There are Chinese companies registered on the New York Stock Exchange. Plus, there are many Chinese companies registered on the Hong Kong Stock Exchange. Registration of Chinese companies on the Hong Kong Stock Exchange is not without its problems. For example, one of the companies that was registered on the Hong Kong exchange made a disclosure that was totally bogus. The company took the money raised on the exchange and paid off all sorts of people

instead of reinvesting in the company. But the investors took that risk. Nonetheless, there are efforts to require a more serious disclosure by Chinese companies seeking listings on the Hong Kong Stock Exchange in the future.

Yet, the uncertainty about currency convertibility and the reliability of corporate disclosure is likely to persist for some time.

To illustrate, I'll share a little story. When we went to Shenzhen in '95 I wanted to see the stock exchange, but I couldn't find anyone willing to take us into the stock exchange. So, I requested that our delegation at least see a broker's office, so we were eventually taken to the largest brokerage house in Shenzhen, but this much-praised place turns out to be merely a modest little store front. We walked in, and we found all the Chinese brokers sitting around on little stools, watching a tote board and then running back and forth to a window to make trades. It looks a little unreal right now, but everyone there is fascinated by it. Cab drivers talk about how they made twenty percent on a particular stock. So the atmosphere is a bit incredible, more than a little wild and very volatile.

As I said yesterday, if you can imagine being in California for the gold rush in the 1850s, then you'll get a sense of what southern China looks today like.

Professor Joseph Dellapenna:

Indeed, there were several large riots in Shenzhen during the last year, all provoked by rumors and sometimes facts about manipulations taking place on the stock exchanges. Investors may be sitting around when suddenly the stock market drops sharply for no apparent reason, and those investors and the population take to the streets.

- Professor Hagelin: But, again, context is important; Shenzhen is not, say, Albania. The economy is not being propped up by a pyramid scheme.
- Audience Participant 2: If the Chinese have the authority to move the center for financial control from Hong Kong to Shanghai, and if they succeed in doing that, do you think foreign investments would follow?
- Ms. Rogers: It could pose a bigger problem, potentially, but such a move won't happen suddenly, only gradually. On the convertibility issue, I think that the Chinese RenMinBi will be convertible to the U.S. dollar very soon. Plus, it's already possible to change the Chinese RenMinBi to Hong Kong dollars, so that shows potential for confidence in the market, in the long run.
- Professor Hagelin: But that conversion is at the official rate.
- Ms. Rogers: Yes, it's at the official rate, but it still indicates a relatively hassle-free way of changing money.
- Professor Dellapenna: If you know the right jewelry store you can get a better rate.
- Professor Rogers: Maybe, but the significance of having U.S. dollars isn't really as great as it was ten years ago. Now, it's no big deal; it's part of a routine process.
- Audience Participant 3: Professor Wesley-Smith, can you tell us what is going to happen to the non-Chinese Hong Kong people residing in Hong Kong now who have enjoyed the full status of Hong Kong citizenship so far?
- Professor Wesley-Smith: That's not entirely clear.
- Professor Maier: Are you one of this sort of citizen

over there?

Professor Wesley-Smith:

Yes, for the time. Sometimes I regard myself as white Chinese, but not as quite Chinese; but not everyone agrees with that.

The provision for permanent resident status is set out in the Basic Law. Under the Basic Law, a permanent resident is a person who can't be deported or removed and is not subject to visa control. Now, as far as I can see from the discussions from the Chinese side, they haven't really been taking any notice of what test is set out in the Basic Law. The question of residency and citizenship status has resulted in an utter and total confusion which is affecting Hong Kong in various ways, amongst the overseas Hong Kong community; the Hong Kong diaspora is faced with the issue of whether it is necessary to be physically present in Hong Kong at the time of the transition—a magic stroke of midnight—in order to retain one's rights. Of course, this is putting great pressure on the airlines, which rumor has it are charging special fares, and making a fortune out of this concern by members of Hong Kong's overseas community. The requirement seems to be that any Hong Kong citizen who was a permanent resident, perhaps by birth, but who has now decided to live elsewhere, say the United States, must be safe in Hong Kong on June 30th and July 1st if he or she wishes to retain full permanent resident status.

The non-Chinese residents—and they are traditionally British people, U.K. residents—of Hong Kong are those who typically entered Hong Kong without being subject to visa control or work permit requirements. If they've been in Hong Kong for at least seven years, then the idea is that they've

acquired iron-clad Hong Kong residency status. Of course, that's changing now and at the end of this month, I think, they're just about to lose it. That's the proposal anyway. But there is some resistance in the Legislative Council, where some have argued that even though the Brits shouldn't have the right to acquire residency status like that in the future, those who already have the right to such status shouldn't have it taken away. That's a novel argument from the perspective of the immigration law, though I think that it's an obviously just argument in terms of the retrospectivity of law and its effect.

There's another group of non-Chinese residents who will be affected as well. This group consists of people who—unlike someone like me, who has the right to vote in another country—are non-Chinese people who were born and bred in Hong Kong and do not have a passport for another country. There was a huge campaign on their behalf which was reasonably successful with the British government for about ten thousand people who are categorized in this status. The British have now agreed to give these Hong Kong-born non-Chinese U.K. passports. They will become permanent residents of Hong Kong. And I don't think that this arrangement is very unsatisfactory for them, because they have a place to call home. Admittedly, it's only Hong Kong and they're not Chinese nationals, but they are permanent residents with the right of abode, and no deportation removal or visa control. So they are not stateless: they have been given U.K. residence.

Audience Participant 4:

While working for a law firm in Saudi Arabia, I became very aware of a very unique and sticky thing between Kuwait and Saudi Arabia called a

political condominium which functions as a neutral zone. It was organized because the Saudis and the Kuwaitis couldn't decide who really owned that part of the world—specifically, the mineral interests under it—but needed to find a way to divide that mineral interest and to administer civil issues in this “jurisdiction.” My question is this: could Hong Kong be thought of as one of the world's first political condominiums?

Professor Wesley-Smith:

A condominium, in my understanding, exists where there are two nations sharing government facilities and operations in a particular territory, such as there was in New Hebrides, or what is now Vanuatu. But with Hong Kong, there's ultimately only one country involved, and that's China. There was a thought at one stage that the U.K. and China might share government facilities in Hong Kong, but that proposal was abandoned by the British back in the '50s or '40s. So Hong Kong can't be a true condominium according to current definitions.

There is and there will be a sharing of power between the P.R.C. and the Hong Kong Special Administrative Region (hereinafter Hong Kong SAR) itself, especially at the local Hong Kong government level. In that sense there is power sharing, but no more so than as in a federal system like that found in the United States.

Incidentally, we can't call the structure in Hong Kong “a federal system” for political reasons: the P.R.C. thinks that to do so would be to imply that Hong Kong is sovereign or independent of China, because the P.R.C. thinks that all federal systems are a result of a combination of independent countries that come

together to form a federal system. This of course is patently untrue, but that's what the P.R.C. believes. So we can't use the term "federal" to describe the structure of the relationship between the P.R.C. and the Hong Kong SAR, even though it's more in the nature of a federal system than anything else; certainly, the arrangement in Hong Kong is not a "condominium," at least as I understand the term.

Professor Maier:

The view the Chinese take of the current system reminds me of the definition of a "factoid," a term we used when I was in the State Department: namely, a "factoid" was a statement clearly contrary to fact, believed by no one, but used and accepted by all.

Audience Participant 5:

By acquiring Hong Kong and the great amount of business activities there, what does China get?

Professor Hagelin:

Well, a tremendous boost, a lot. While—to be perfectly straightforward—I'm not at all sure that there will be any sort of shift to Shanghai, China benefits enormously. Hong Kong really has a unique strategic position, certainly with respect to Southeast Asia, and China now manages Hong Kong's role as a gateway. The most important thing that China acquires, though, is an incredibly skilled professional and managerial population. China is in desperate need of managers and well-educated, well-traveled professionals to make previously state-subsidized ventures in China viable and of interest to investors worldwide and to overseas markets. Hong Kong's population helps provide that. Plus, there's a huge amount of capital, which will continue to flow to Beijing from Hong Kong, even if the Hong Kong stock market moves to Shanghai.

Professor Wesley-Smith:

I'd agree; there's really no question of a great wodge of resources from Hong Kong being transferred to the Central People's government.

Professor Rogers:

I'd like to make a simple footnote to that. What I want to try to say relates to the relationship between politics and economics. There seems to be an assumption that China can deal with politics and external affairs, but that China can leave the economics of Hong Kong alone. But Hong Kong is a very rich and tempting pot for China, and there are ways of tapping into that pot without doing it directly or on the surface. For instance, if you need to get licensing approval, you may have to get that from an official who owes his or her position to somebody else to whom an allegiance is due because of a certain "friendliness," and this allegiance can be traced ultimately to someone high up in Beijing. Most of us would call a system of favors "corruption," although I'm not sure that corruption is the right word for it. Yet, when the political decisions are ultimately, if indirectly, being made in Beijing, then some money is going to flow to Beijing; people, or the corporations or interests they represent, are going to be aware of the need to deal with the reality of that sort of system, and it's going to have very tangible monetary manifestations.

For instance, there was a question as to whether there would be a third airline in Hong Kong. The final, apparent agreement was to stick with the two existing airlines: Dragon Air and Cathay Pacific. Perhaps part and parcel of that agreement was an understanding that a certain amount of the stock of one of those airline companies would be controlled by Chinese interests. Now, the underlying question is: would those Chinese

interests have been able to obtain that stock in one of those two airlines if it hadn't been for the threat of having a competitive third airline in Hong Kong? Keep in mind that approval for the third airline would have had to come from a sympathetic government in Beijing, which would have the effect of making that third carrier a Chinese airline. It's not as though someone in Beijing explicitly instructed Cathay Pacific to trade a percentage of stock to China in exchange for reduced competition. But it's an example of how, indirectly, profitable assets that are part of Hong Kong's "pot" flow to mainland China. I may not be explaining it exactly, but certainly such things happen.

Professor Wesley-Smith:

I agree with your assessment totally. I think the fact that Hong Kong has been a British colony with a quite separate system of government has meant that there's been an immunization between Hong Kong and China. But as soon as you lose that, then the wall becomes much more porous, and the connections become much more diverse.

Professor Dellapenna:

This is one of the few points that really concerned a number of people whom we met while I was leading the ABA delegation to Hong Kong several weeks ago.

During our meetings with business people there, quite a few expressed to us misgivings that some people might find their arms twisted and end up selling controlling interests or even minority interests in their companies as a result. One of the members of our delegation raised the Cathay Pacific transaction. Twenty-five percent of Cathay Pacific stock was sold to China's government, I think, or at least to its investment group, the Chinese

International Trade and Investment Corporation.

And the question was asked: was the Cathay Pacific a case where arms were twisted? And the answer came back: No, no. In fact, that was a sale at a "fair price."

But, actually it was below market value, according to our informant. "Fair price" does not necessarily mean market value on the Hong Kong stock exchange. When pressed, the person we asked finally said: "Oh, no, no, it was below that, but it was a fair price."

So, it's rather how you look at things.

One of the incentives for such arrangements in business transactions, of course, is that it meant there would not be a Chinese-funded airline as a competitor to Cathay Pacific. Because Cathay Pacific now is, in effect, the Chinese airline, even though seventy-five percent of it is still owned by the original investment group.

Professor Wesley-Smith:

There's a term in Hong Kong, "friendship price." I don't know if that term is used elsewhere, but essentially it connotes the fact that P.R.C. instrumentalities can obtain a lower "friendship price" on certain things.

Audience Participant 6:

I'd like to comment on earlier discussions about what it is that China "gets" most with the return of Hong Kong. While it's true that China is in need of more skilled workers, Hong Kong has been a window to education and international managerial professionalism for China for some time now. These people have already helped to open China as a country and as a market for export. So, even though there are issues to be addressed that way, that's not the most important thing China "gets" when the transition

occurs. Really, what China gets most is pride; if you are Chinese, you get back your pride.

To have Hong Kong back from Britain ends a humiliation of China; it restores Chinese pride. It's not about acquiring materials or markets or money, really, but pride.

As for the issue of Beijing's influence on business in Hong Kong, I think there is a perception of the Chinese as not always being "straight" or honest, that they break promises or breach contracts. But there are different ideas about honor, depending on history and culture, and that influences the government of China in many ways.

The Chinese government hasn't explicitly or openly broken a contract, though they obviously do so in a very subtle way.

My concern is that if western governments put a lot of pressure on the Hong Kong government or the Chinese government to try to get Hong Kong to be more independent, then the Chinese government will take that pressure as a threat to Chinese territorial integrity, the idea of which is very important to Chinese people and the Chinese government. If Chinese officials encounter such pressure, then they will feel compelled to take stricter control over Hong Kong, when both such action by China and pressure from the West are not necessary. Politically, Hong Kong won't ever be totally dependent on Chinese officials, because of leaders like Tung Chee-hwa. He is in many ways controlled by China, but with him the Chinese government can let Hong Kong function independently in many ways, in many areas. If we in the West decide to pay a lot of attention to the Chinese and independence for Hong Kong, then the

Chinese may press for even more control of the Hong Kong government.

Mr. Yu:

In connection with that observation, I would like to say that in some sense the Chinese government had no choice but to take over Hong Kong at that moment when China stopped its negotiations with Hong Kong—or with the British government. This issue of choice directly relates to another question, which is this: if the Chinese government did not propose to take over Hong Kong, what would happen to the Chinese government in Beijing? For Beijing's leaders, this may be the more serious question because it relates to the stability of their positions. Because they are Chinese people, educated in China under the older systems of either communism or nationalism, all of the current Chinese leaders—including the nationalists and those before the nationalists—in all forms of the government, insisted that Hong Kong become a part of China, as Professor Wesley-Smith mentioned yesterday.

A major question faced by each successive generation of Chinese leadership was how and when Hong Kong was to become a part of China. Whenever the British government proposed something to China, China had no choice but to answer that China would recover Hong Kong. So now it is expected that this promise to the Chinese people by Chinese leadership will be kept. But Hong Kong is a source of concern to the Chinese government; unless they can keep Hong Kong going, China will be in a dilemma. Otherwise, many will think that China ruined Hong Kong, that the Chinese scammed Hong Kong, and the loss will be seen as China's fault. It's in China's self-interest to keep Hong Kong as

prosperous as when they received it; it is to the leaders' benefit. And they need Hong Kong, directly, to contribute to the perception of China. They want Hong Kong to continue as a free market; it's a way for China to develop and maintain regular contact with the rest of the world, and also a way to draw the international investments through Hong Kong into China. And I think that China will continue to maintain its national fiscal center. It's not so much that China intends to take over Hong Kong, to recover it absolutely—that goal is historical and political, but not so practical.

Professor Rogers:

That seems to be the conventional yet insightful view—namely that China has an underlying political reason for wanting to get Hong Kong back, but their number-one priority is to keep it economically successful. I would like to suggest that while ensuring Hong Kong's continued economic success is a very, very high priority for the Chinese government, they have one priority that is higher than that, a priority which will always be higher than that. The top priority, I think, for the people apparently in charge of Beijing is that they will continue to be the people who rule China; they want to preserve their positions and to be sure that nobody else will take over from them. If their sense of their own security is threatened, then other things will be sacrificed, don't you think? And that's why Hong Kong presents a problem for them: if they take Hong Kong for political reasons and try to maintain its economy, but preserving Hong Kong's economy somehow turns into a threat to their political control, then there will be a conflict of priorities.

Mr. Yu:

I agree with you and your ideas

that China's number-one prerogative is to rule Hong Kong, as long as Hong Kong is not a political threat to China's leadership. This is the formula, here at least, for the behavior of the Chinese government. However, I would also add that Hong Kong and its people, well, they're not in China.

Professor Dellapenna:

In terms of expectations, it's important to note that Hong Kong, up until now, has been very, very highly regionalized in the Western sense. Having a British court system—which places like Taiwan or Thailand or Korea never had—puts Hong Kong in a very unusual position. And the question is, in terms of Hong Kong, can Hong Kong keep it? The mainland government, so far, continues efforts to educate the mass of people to think more legalistically, which is really the key. These are the people that survived Tiananmen and the death of Deng Xiaoping, at least so far. No one seems seriously to challenge that block of survivors, though that doesn't mean they can't be challenged in the future.

This reasoning presupposes what I think most observers do suppose: namely, that the power struggle is over, that the power struggle was fought before Deng Xiaoping's death was announced. If this assumption is correct, then this effort to legalize will continue.

But if the real power struggle is yet to come, then the leadership and efforts towards a legalistic society may be challenged successfully. Regardless, though, developing a law-oriented society in China will take longer than in places like Taiwan, if only because China is a much bigger country, and more people have to change in the way they think or the way they act.

Professor Hagelin:

I'd like to try to relate those ideas with others we heard yesterday. As Dr. [Edwin Lun-Cheung] Lai pointed out yesterday, there may be a fascinating parallel between the P.R.C. and Hong Kong's economy with the events of eighteenth century Europe, which witnessed the rise of the business class and the collapse of the monarchies. In talking about whether China will ever adopt the rule of law, a lot really does depend on your fundamental philosophy and whether you believe that law leads or law follows. Some believe that the economics of a free market is the driving force, and that the law follows; others think the opposite, and it may be the whole chicken-or-the-egg question. If you look at the situation in Europe, the Uniform Commercial Code was not legislated in the eighteenth century and seems to have had, therefore, little to do with the rise of commerce. Instead, I think it was quite the inverse: we had the rise of commerce, which ultimately led to a legal system.

I think that is the long road to China. It's almost organic: markets grow and then you must have certain rules in order to govern the markets. As China's financial stakes grow, China will ultimately become a more liberal society. That liberality will emerge as a result of what is essential to do in order to preserve the market.

To relate this to current disputes over intellectual property: the United States is always on China's case for China's failure to abide by the intellectual property protections. But it's significant that, for the first 100 years of the United States' history, we pirated books from England regularly. We did not recognize copyright protection. It's much easier to be the champion of intellectual property rights

when you are the world's largest exporter of intellectual property, as we are now. China, within a very short period of time, will become a net exporter of intellectual property. Then, I suspect, the Chinese will look quite differently at intellectual property protection.

Again, my fundamental point is that a lot does depend on whether you see the law as leading, or whether you see the law as following in relation to economics. The Communist Party will change, even though not quite likely to give up power. But there isn't a lot of strong ideological orientation in the party today, and as others have pointed out, the Communist Party today is primarily a means for achieving status and wealth in society.

As commerce increases and as the markets expand, the most capable persons in those transactions will ultimately replace the "princelings" anointed by the Communist Party. We may have a difficult time with the princelings in the short run, but sooner or later—and we can see this in the great dynastic families in this country—each generation makes its own imprint on its own time. And if the chosen leadership is foolish enough to squander wealth, if it's not astute in transactions, sooner or later there will be a natural replacement. I think that is quite likely to happen in China, just as it has happened in the United States.

Professor Wesley-Smith:

To address this issue of the relevance of the rule of law to Hong Kong's economic well-being, well—I was hoping that Professor [Edwin Lun-Cheung] Lai would be here so I could put this matter to him. The importance of the rule of law is often stressed, particularly, of course, by lawyers; the rule of law makes lawyers look pretty

good. But that concept is also expressed very strongly by the Hong Kong government, which continually emphasizes that the rule of law is fundamental to the achievements of Hong Kong and to its economic success and that the rule of law must be maintained accordingly.

Now, indeed, the Basic Law really is, in terms of rule of law, a very impressive document. It seeks to preserve all of the institutions of the rule of law and the ideology of rule of law in Hong Kong. Yet, studies of Chinese overseas capitalism—and indeed Hong Kong capitalism—indicate that the rule of law is virtually irrelevant to everyday business practices. These studies suggest that what is far more important are family connections, kinship contacts, or *guanxi* in the more general sense. Even in Hong Kong among British “Honggs,” it’s the meetings amongst the stewards at the Jockey Club, who may be on the Board of the Hong Kong Bank, where the major business decisions get made. And these business practices are not dependent upon the courts or the formal structure of the rule of law at all. Therefore, or so the thinking goes, whether Hong Kong remains a rule of law society is virtually irrelevant in terms of economic success. If that is indeed the case, then the Basic Law, which is designed on rule of law principles, may in fact be seen as totally irrelevant.

That’s an argument set forth by a colleague of mine, Yash Ghai, who has written a book on the Basic Law which will be published at the end of next month; anyone interested in the whole Hong Kong question is welcome to buy that book. I’m not sure whether his argument is correct or not. I would like to have heard more economists comment on that.

Audience Participant 7:

I think the comment on that is the fact that Hong Kong's rule of law has not changed for the last forty years, but its prosperity certainly has. That prosperity was created by the change of the market force more than any rule of law. After China opened its door to the world's economy, Hong Kong became a gateway, and that's what caused Hong Kong's prosperity, more than an ideal about rule of law.

Professor Rogers:

I would say, first, that this argument about whether the law leads or follows development in the economy really misconstrues the process, because ultimately it is a reciprocal interaction. The law affects the market; the market affects the law. At one point in time, one may have strictly dominated; at another point, the other may have strictly dominated. I could, although I won't try to here, go through various historical examples that demonstrate their interdependency.

I would also disagree with the statement that the rule of law has not changed in Hong Kong in the last forty years. As an example of one of many such significant changes, there is the Commission Against Corruption, which was created less than twenty years ago. The laws and principles it promulgates are recognized as important at the very highest levels; two weeks ago in Hong Kong, for example, Anson Chan stated that, before the creation of the Commission Against Corruption, Hong Kong was a very corrupt society. This commission's work thus represents a very important break-through; it's something that allowed Hong Kong to finally, really establish the rule of law and a more reliable business climate.

Audience Participant 8:

It seems that the rule of law is

often tied inversely to the rate and risk of return on investment. You can have a society, a capitalist society without laws, but you will also have generally high risk, high return type of projects. Only when the rule of law is present, lower risk—but lower return—projects seem to emerge. This, if it's true, may pose problems for Hong Kong, especially for the lower risk-lower return projects there: if the advantage of having the law dissipates or the effect of the rule of law dissolves, then we may very well see those particular businesses going under.

Professor Dellapenna:

Ted Hagelin keeps referring to transitions that have happened in Western Europe and the United States as the model for what will happen in China with the return of Hong Kong. But China has a wealthy class of entrepreneurs and merchants and, Ted, I wonder why you wouldn't refer to Mexico, or Brazil, or Columbia as the model for China's markets; this model is one in which money is siphoned out of the country to benefit a select few and no real progress is made for the mass of the people. I'm not predicting that sort of scenario will happen in China or Hong Kong; I'm simply wondering about the basis here for constantly predicting the Chinese will follow the North Atlantic model.

Professor Hagelin:

The short answer is that there are over 4000 years of history in China of "international" relations, while it seems to be a quite different situation in Mexico. You know, arguably, China is extraordinarily attuned to customs and codes and systems of conduct at many levels of society. Look at the number of regulations. Anybody who wants to do a joint venture in China will certainly encounter lots of laws. While laws have

done unmitigated good, from a business person's standpoint, laws nonetheless represent transaction costs. It's a drag on the system. The most efficient market in the United States is the diamond trade market in New York City, where millions and millions of dollars of diamonds are exchanged every hour with a handshake. To do a deal like that, you need a certain kind of trust, a certain kind of kinship. I don't think we should necessarily assume that the more pervasive the law, the better our system is, the better our commercial transactions are. One of the fun things about witnessing this extraordinary period in Asia is that it precipitates some self-reflection about law and its role in the United States. As we close out the twentieth century, it could be argued that the United States has become overly regulated and overly legalistic to our detriment. I don't know if we should continue to pass laws for another 100 years at the rate we were passing them for the last 100 years; I really do worry about that. I don't know whether business can survive in the environment it has to survive in right now.

The number and variety of different approval processes and licenses required for investments in China is extraordinary, but the laws and regulations for U.S. businesses are staggeringly complex too.

For example, I was asked to teach a course a couple of years ago for the engineering school in Syracuse for engineers who were going into management positions. As part of preparing the course, I decided to put together a small compendium of the various laws of which a small business would have to be aware. The sheer volume and complexity of those laws were staggering; it was staggering to go

through the environmental protections; the workplace protections; the corporate liability protections; and the tax considerations. I have to say that, as complex as the Chinese system is in terms of doing business, it's not that much easier to start a small business in upstate New York.

Professor Maier:

When we start talking about what we mean by the "rule of law," I have the impression that most young attorneys here and perhaps American lawyers generally tend to think that "law" consists solely of statutes and regulations.

It's all very well to do that for some purposes. In fact, that concept is what one has to face most often when one deals in business matters. But it doesn't necessarily follow that a failure to adhere to each of the existing pieces of writing on the books means that there is no "law" in a particular system. It's important to recall that, although I don't know if the concept applies with regard to the Chinese. But if you look at Europe during the rise of the mercantile groups, at the league of cities engaged in trading, you see that there was no central line of governmental function; yet there were "courts" scattered around the North Sea. One was in Oslo. These courts were non-governmental, but they successfully enforced a law of merchants; the rules were established not by the state, but by customs and practices in this Hansiatic League. There was no enforcement mechanism *per se*, except that you could lose a place in a port by not obeying the accepted practices, and then you would find yourself outside the system—which is, in effect, the worst punishment you can possibly suffer if you're a business person—not being able to be a business

person in the system.

I wonder if, in fact, we may have focused too narrowly when we talk about the rule of law in China and the role that the rule of law may or may not play with respect to Hong Kong. Perhaps we have focused too much on the technical or formalized aspects of law, rather than what legal mechanisms may develop if the Chinese are truly pragmatic, as they seem to be: it is pragmatism that drives this kind of effective yet non-governmental system—one where, irrespective of whatever is on the books, all those trading know how to proceed.

I don't know if that will prove to be the end result, but it seems to me that such a system functions as a sort of a "way-station"—there may be better ways to think about whether one ought to take a group of statutes and declare them wrong. Should one attempt to redo them entirely? In fact, the accepted norms may suggest that corruption is appropriate in certain kinds of governmental relations, simply because that's the way the system functions.

This sort of custom with regard to "corruption" happens to be true in certain countries in Latin America. For example, when you advise people about shipping goods to certain Latin American countries, one of the things you have to include in the cost is the bribe required for customs officials so they will put the right stamp on the goods, a task they are supposed to do anyway. It's accepted as a business cost, which is one of the reasons the Foreign Corrupt Practices Act doesn't prevent it: it's a custom that is part of doing business in certain Latin American countries and also certain countries in the Middle East.

Now, it's easy to say that's lawless,

because of course, technically, the laws on the books forbid that, but the practice in the system suggests that what the "law" is may be otherwise. Consequently, a nation is not necessarily lawless because it has a set of statutes which it doesn't in fact follow. If the legal system is not so efficiently developed that one can look at the statutes and get some prediction about how people will act, then one has to look elsewhere. Maybe what one is looking at isn't actually written down; perhaps it is just what is done.

Audience Participant 9:

It seems there's a parallel between what China is doing with the law and what is developing with the use of programming logic in technological advances, even for household appliances: "programming logic" isn't a strict sequencing, but rather a way of achieving a result by various and often alternate methods. For example, you select a destination, a goal, then you send out a message specifying the goal and let the system find out itself how best to get there. The programmatic mind of Beijing is trying to accomplish a certain goal with respect to Hong Kong, and there may be many diverse ways to reach it.

Professor Dellapenna:

My contention is much more modest than I think you took it to be. I'm not arguing that China must be a legal society, or even that China would become better off if it were to be a legal society. I'm arguing that how things are done in Hong Kong is likely to change and that one significant result of that change is that it will be more expensive to do business in Hong Kong. If that is a correct prediction, then the question becomes whether it will become too expensive to do business based in Hong Kong when you could be based in

Shanghai, or in Singapore, or in Manila, or some other place. I think there's a very serious risk that, because of the way Hong Kong will change, business will shift elsewhere.

Professor Rogers:

I see the focus as being basically what Joe [Dellapenna] is addressing, but—this is a little bit of a new role for me—I'd like to raise the human rights concern yet again. The United States is a nation that cares about human rights, and sometimes that leads us to take very narrow, self-congratulatory "preaching" positions. Since preaching is something I try very hard to resist, perhaps I'm not the person to make this point. Yet there is, nonetheless, the core precept that it's important for human beings in the world to live in societies where they have some influence over the government that controls their lives. That power to influence represents the basic political responsibility to which I referred yesterday, and it should be viewed as just as important to us as being able to do business.

If the United States confronts or encounters societies that are resistant to openness or completely repressed, then that is going to interfere with our economic relations with that society—but that's appropriate; we ought to care enough about that.

The one thing I'd like to emphasize is that there seems to be a patronizing undercurrent, particularly in the U.S. business community, but generally across the board as well. It's present in comments like, "China cannot become like the United States," or "the demonstrators in Tiananmen Square were concerned only about corruption and they didn't really know what democracy was all about," or "the Chinese culture will prevent China from

ever having democracy the way we understand democracy." I would like to sound a note of warning: there may be a little bit of condescension in such attitudes.

We should be aware that, it's kind of interesting sometimes, the Chinese may take advantage of Western condescensions. The general situation reminds me of a book by Orwell called *Burmese Days*, which illustrates how corrupt influences took advantage of Western condescensions in local power struggles [in colonial Burma]. We need to avoid letting people in China take advantage of our attitude that democracy won't work in China or elsewhere in Asia, because there are normally politically responsible systems whereby people have really terrible governments in check. It's not inconceivable that that can work in Asia. The fact that there have been elections in Taiwan, and even in Hong Kong via the reform and functional constituencies that Governor Patten instituted, is encouraging. Theoretically at least, everyone participated twice in elections to secure representations. In effect, if you were a worker, you had a vote for that. If you lived somewhere, which obviously you did, you had another vote for where you lived. Essentially, fifty of the sixty people in the legislature were selected to be there by these people who had these double votes. That's a rough, but I think a reasonably fair characterization.

Professor Dellapenna:

Yes, but we must recognize the fact that several of these people who were elected represented a very small number of votes.

Professor Rogers:

I understand your point about the apparent demographic discrepancy. All the same we should recognize the big

picture—the picture that the Chinese government saw—that such elections are more democratic and represent a step towards a system more politically responsible. This is giving voters in Hong Kong some control over their destiny. Such elections, in an important sense, are fundamentally destabilizing to the prime Chinese directive of asserting full control.

Professor Dellapenna:

You may remember that Jimmy Carter gained a certain amount of fame and notoriety—depending on how you looked at his approach—for putting human rights foremost in his foreign policy. Yet, one of the notable exceptions to Carter's policy of emphasizing human rights was the P.R.C.

Stories go around the halls in Washington, one of which may be apocryphal, but it nonetheless makes a point: during 1979, Deng Xiaoping visited the U.S., right after normalized relations between the P.R.C. and the U.S. were established. At the first private meeting between Jimmy Carter and Deng Xiaoping, Carter brought up the question of the Chinese human rights record, mentioning in particular the government repression of dissent. Deng Xiaoping apparently had done his homework and, according to the story, responded in this fashion: He said, "I think you're absolutely right; I think it's wrong for us to refuse to allow people to express their opinion, and I've decided upon a way to solve that problem, since we've got a very strong history of instability in China, and we really can't maintain stability if I go back and just allow people to speak. So, what I'm going to do when I go back is to open the borders and allow anyone who doesn't like the government to leave. How many millions will you take?" End

of Discussion.

See, there is a condescension; there is a double standard. When the people in Tiananmen demonstrated, even if it was not in a political science sense, they showed us that there is an aspiration in China for democracy and the rule of law. The fact of their aspiration directly contradicts what is commonly thought in the West, which is to say that the Chinese don't value the potential and power of law. We should not ignore that aspiration, and we should remember that it is precisely in those human rights areas where the rule of law becomes most vulnerable and most important.

Ms. Douglas:

To jump from the rule of law to the rulers of politics: in the last three or four days two of our top political leaders have been in China. Newt Gingrich is there now and apparently gave a speech—which was not entirely diplomatic by most of this morning's news accounts—at a Chinese School of Diplomacy. Vice President Gore has been there, also. My question to each of you is this: supposing that our leadership in the United States would listen, what advice would you give them with regard to their posture towards China and Hong Kong? And, also, for all of us who have spent the last day and a half learning about this issue, what role should we be playing as attorneys and observers as positions evolve?

Professor Rogers:

Your first question is very well taken, and of course is one about which policymakers in Washington are concerned, especially because China is this extremely powerful, if not *the* major, player that we will be playing with or against—however you look at it—in the next century. This jargon of

whether we should “contain” or “engage” them persists.

Yet the jargon can obscure what is important to do; it's very difficult just to go one way or the other. What we have to do is to identify for ourselves what's important and what we really care about as a nation. Then we have to prioritize those concerns: insist on the ones we're willing to back and not “insist” on the ones that we're willing to let slide. The danger occurs when we start trying to hint that we might do something that they know, and we know, we won't do. Threatening withdrawal of most-favored-nation status is one example of this—it's playing their negotiating game. Instead, what we have to do is to pick a few choice issues and consistently insist upon them.

And we'll be polite. We'll do the visits and the exchanges, and we'll drink just as many *mao tai's*. But when it comes down to the certain choice issues that represent the bottom line, we'll be consistent and not back down. If the issue is intellectual property rights, then we have to be able to insist on intellectual property rights. If the Chinese come back and say “don't worry; we'll take care of that,” and we smile in approval only to have them not take care of it a year later, and then we say “don't worry about it; we'll go on to another issue”—that's not consistent. The Chinese can see through that; they think “oh, that's just the American government saving face; they don't really require it after all.” So I think we can't have all the changes [in Chinese behavior that] we want, but by the same token we shouldn't say relations with China are so important that we can't let a particular concern, say, Tibet, get in the way. We can't declare that relations are so important to China that we can't

let Taiwanese rights get in the way, or that we can't let intellectual property rights get in the way. I'm beginning to wonder what it *is* that is going to be something we care about when we negotiate with China, what concerns we *will* let get in the way. If I'm wondering, then there must be some bewilderment in China too.

Professor Dellapenna:

Madeleine Albright addressed this issue in her first press conference after she became Secretary of State. She was asked what she thought would be the proper reaction if the Chinese violated the terms of the Hong Kong Relations Act, which requires the United States to impose trade sanctions if Hong Kong's economy is not respected. You know how she answered? She said, "I think it would be a mistake to allow our policy towards China to become a hostage to any one issue." So much for the Hong Kong Relations Act.

Mr. Yu:

I would like to comment on the history of the P.R.C. and the United States in terms of human rights. In the past few years—at least since 1989—the human rights issue has become prominent not so much because any government had an interest in human rights, but primarily because the American people raised their voices up and the government had to take action. Americans have learned it's necessary to find different ways to deal with human rights with China; they are realizing, gradually, that most-favored-nation (hereinafter MFN) status has lost its earlier importance as a tool for pushing China toward better reforms of human rights abuses.

It is fair to say that the American government cannot afford to lose economic ties with China by repealing MFN status with the P.R.C. Both the

Chinese and the American governments are very aware of this fact, that the question of U.S. Congressional renewal of MFN status is a game that is played each time the question comes up. Every year before the June 3 or June 4 anniversary of the Tiananmen Square massacre, the Chinese government releases some political dissident held prisoner, in exchange for a favorable review and grant of continued MFN status. Maybe two weeks after MFN status is bestowed once again, the Chinese government cracks down and detains another group of people. And this game is continually played among the countries. It's really important that the governments of both the P.R.C. and the U.S. listen to the people of China and the people of the United States. The American government should deal with China more seriously and in full sincerity; if the U.S. can't, in practice, really withdraw MFN status, then just don't say that. Yet if the U.S. wants, for example, to see greater justice done in Chinese courts, then the U.S. should say that to China, and tie it to an available economic deal, and make the Chinese government know the Americans are serious. Right now, the U.S. does not have a history of consistency so there is a poor reputation on the issue of MFN and human rights. So the Chinese officials view the U.S. position with skepticism, and they are left with saying, what do we do? If the U.S. wants to take MFN status away, take it all; if you won't, don't threaten to do so; just drop it. If this game continues, it won't do any good for the Chinese human rights forces.

In my understanding, every year in the U.N. Human Rights Commission, there is a resolution proposed by the United States and other western

countries that attempts to try to criticize the Chinese government's human rights record. But I personally question how effective these efforts by the governments are, because they don't seem to achieve any specific results. There is always the question of whether the resolution is sincerely proposed, whether the proponents of this resolution really want to pass it, or if they just want to be on record and posture. At the end of each session, the world finds that no resolution ever passed; it's just a way to try to pressure the Chinese government by proposing a strong kind of resolution. It's all a game to appease the people, but it's a kind of hypocrisy. So the Chinese think they have to take it seriously.

So if the western governments of the world sincerely want to take on the human rights issues, they have to deal with the Chinese government in a very honorable way, not just with empty words.

Professor Hagelin:

Again, I find myself counterbalancing the position on the other side of the table.

Professor Dellapenna:

You'd never guess we're old friends.

Professor Maier:

Oh, yes we would.

Professor Hagelin:

No doubt there are human rights issues in China regarding which the U.S. rightfully ought to try to, I will say, nudge China forward, though not insist. But to give a direct response to Laurelyn's [Douglas] question as to what I'd advise, I'd go back to Hal's [Maier] point about domestic politics.

As those of you who are parents know, in raising children you need to find the fine line between congratulating them on their successes and

achievements and directing them toward other things. If all you do is give feedback that is negative, that is very, very, very harmful. Consequently, my advice to policy-makers would be to spend as much time as possible recognizing some of the extraordinary achievements that China has made. Keep in mind that China's a country that, thirty years ago, was in virtual anarchy and, as we tend to think of it, absolutely lawless. The tremendous fear in Beijing is instability; it's that lawlessness. People over the age of thirty-five or forty in China who lived through this lawlessness understand this first-hand. From the United States' standpoint and that of the Western Hemisphere generally, the worst case scenario would be to have China's going into that unstable condition again; economic and trade relations are just a part of the picture. The potential for instability poses an enormous risk to all of Asia. We need to work to help China be a stable country. We need to recognize China's very recent history of relative anarchy and also the extraordinary advances China has made in a very short period of time.

To communicate in terms of domestic politics—and I've done no quantitative study on this, but it's readily apparent from watching NPR and network news—Asia has become much more prevalent in our news than Europe or the [former] USSR. Although Asia is very regularly in the news now, I'm concerned with the quality and lack of depth in reporting on Asia at this point. It does seem to me that most of the reporting on Asia follows whatever the government in power in Washington has in mind; there's not a great deal of discussion of various viewpoints.

My advice, as part of reaching a mature policy with China, would be to

continue to broaden the debate that we're having here today in further public forums, because it's a wonderful debate and that debate needs to be ongoing within the American public. We're going to need better reporting and more forums like this; otherwise, we'll be too ignorant to know how and where best to proceed. To illustrate, I offer a short story: I went to get a haircut before I came to this conference and was talking about my upcoming trip to Hong Kong. My hairdresser said, "Well, what is the food like in Japan?" That brought the issue home: we really do need to broaden the knowledge and awareness of this country about other areas, especially in the Asia-Pacific region.

Professor Maier:

I'm going to let that be the second to last comment. The last one will be mine. I have not enjoyed myself as much as I have today in a long, long time; I'd like to congratulate the speakers here and the students who organized these sessions, and to encourage everyone to continue to think and talk about issues raised here.

The debate, of course, is not going to be resolved here. But I do believe these discussions have opened up what one ought to open in these contexts. I am not referring to specific answers, because the answers are pretty easy when people find them. Rather, I refer to the questions raised, because there's no way to get to the right answers unless you've raised the right questions. So I offer my thanks to everyone who has helped in that process and an invitation to continue the dialogue further.

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