

TURNER:

Hello and welcome back to Wisconsin Law in Action, a podcast where we discuss new and forthcoming scholarship with University of Wisconsin law school professors. I'm your host, Kris Turner. And my guest today is Doyle-Bascom Professor of Law and Public Affairs, Mark Sidel. Professor Sidel is here to discuss the increasing tendency of governments to restrict foreign investment grants and donations to nonprofit and philanthropic organizations in those countries. We'll start with two pieces that Professor Sidel has published in the last year that focus on China and then expand beyond that to other countries as well. And we'll end with the review of the implications of these policies. So thank you for joining the podcast today, Professor Sidel.

PROF. SIDEL:

I'm glad to be here.

TURNER:

Always pleasure to see you. So let's start with our discussion by learning a bit more about your background. What is your professional experience and what led you to researching and writing about governmental restrictions of grants to nonprofits?

PROF. SIDEL:

Thanks Kris, I'm delighted to be doing this. I came to focus on nonprofits and foundations, philanthropic organizations, because that was my background before I began working at- teaching at law schools, I originally worked beginning in the late 1980s with the Ford foundation. As the Ford foundation was opening the first foreign foundation office in China, and then led the foundation's efforts as it developed a program in Vietnam in the early and mid 1990s. And then again worked with the foundation in New Delhi, running a program to support philanthropy in the non profit sector in India and South Asia based in new Delhi and through all of those experiences, which lasted over a decade in total, I got very interested in the process by which nonprofits and philanthropic organizations try to thrive, try to sustain themselves and try to deal with the governments and in the countries in which they're located. So that's my basis that I came to this topic that I write about and do policy work on because I worked in the area before I entered academic life.

TURNER:

Let's begin by defining some terms and getting a brief crash course in nonprofit and philanthropy through the lens of foreign investments.

PROF. SIDEL:

NGO is the term we usually use for non-profit organizations that operate across borders or outside their own countries. That's short for non-governmental organization and there are thousands of them operating around the world. We're most familiar, for example, in the United States with American NGOs or American non-profits governmental organizations that are operating throughout the world, groups like Oxfam US or Save the Children US, or World Vision or lots of others. I have happened to mention a couple of the larger ones, but there's also many, many smaller ones. Those are NGOs non-governmental organizations. They work, or they try to work doing relief, work, humanitarian work, advocacy work for rights and things like that in places around the world. And then you have organizations that may not actually do work on the ground, but try to provide resources like foundations, the Ford foundation, the

Gates foundation, the Rockefeller foundation. Those are also a kind of non-governmental organization themselves. We usually call those foundations because they are, and they're investing in nonprofits in the countries in which they work. They may also be investing in academic organizations, universities.

PROF. SIDEL:

They may even be investing in the work of governmental agencies to do socially innovative work, but that's the general concept of non-governmental organizations. And it really has to do with organizations from one country, nonprofit organizations from one country crossing borders to work in another country.

TURNER:

In one country where they've been pretty active, at least in relatively recent years is in China. So in your first article, "Overseas NGOs and foundations, and COVID in China," published in EURICS in July of 2021 discussed a history of NGO regulation in China. How has the Chinese governments policy changed in recent years?

PROF. SIDEL:

China's always been very careful about the work that oversees non-profit organizations, non-governmental organizations, NGOs do in China, whether it's organizations that provide resources like the Ford foundation or organizations that work directly on the ground, like Oxfam or Save the Children or World Vision or other groups like that. China has been at times cautiously welcoming of those groups. At other times, like in the past 10 years, they've been somewhat more suspicious of the activities of those groups. And over the past decade in China, China has been leery particularly of organizations that try to promote democracy or rights advocacy in China, from abroad. And beginning about 10 years ago, and very specifically about five or six years ago, China began employing more legal means to restrict, to constrained, to control the work of these non-government organizations, both those that are directly active in China and those that provide resources to local groups in China.

PROF. SIDEL:

So the change in policy in the past six, seven years, the past 10 years since Xi Jinping came to power in China in 2012 has really been in one direction, which is to control, to constrain, to narrow the scope that foreign organizations can play in China.

TURNER:

So what prompted this securitization in policy towards overseas foundations and nonprofits, does it apply to places like Hong Kong, Taiwan, as well as foundations from North America and Europe and other places in the West?

PROF. SIDEL:

In China what has prompted this over the past six or seven years, particularly, but more broadly over the past decade is a sense that some of the organizations that operate from abroad are going beyond charity. They're going beyond relief work. They're going beyond humanitarian work. They're trying to build the capacity. In some cases, at least according to the Chinese government, they're trying to build the capacity of critical actors in the countries themselves to try to bring about reforms, or may even maybe a view of some, bring about a change in government. That's a much harder position that the

Chinese government has taken in the past, especially 5, 6, 7 years than it took before. And China's very much opposed to organizations going beyond the charitable role into anything that approaches advocacy or helping Chinese groups advocate for human rights and things like that. It is the more authoritarian places, China, Vietnam, India, and other countries, and other regions of the world that are particularly concerned about American and European, especially non-governmental organizations and foundations coming in and doing this kind of work.

PROF. SIDEL:

So it's particularly in places like China, where there's that concern. China's also very concerned that foreign philanthropic capital, the work of foundations and other groups contributed in its view to the color revolutions across Eastern Europe, across the Middle East and North Africa in 2013, 2014 in Hong Kong, there's scant evidence that foreign non-governmental organizations and foundations were leading actors in those indigenous domestic developments. But from the Chinese perspective, they do feel that foreign intervention played a role in those color revolutions. And they are determined to stop that from happening in China. The result has been that the space for movement, the space for work that foreign foundations and non-governmental organizations have in China since about 2015, 2016, has been substantially narrowed, substantially constrained. And so those organizations that remain in China are limited to a certain range of activities and just don't have the ability to do the breadth of their work that they had before.

TURNER:

Interesting. So it sounds like sometimes the Chinese government can see these NGOs as maybe Trojan horses? Where they are coming in with charity, at least on their sleeve, but there might be other ulterior motives, but beneath that?

PROF. SIDEL:

There is definitely that view in China. Now China's a big place. So there's all different kinds of policy views in China. There are certainly some that have the kind of Trojan horse view that you're talking about. There are others in the government and in academic institutions and in the Chinese nonprofit sector itself, who don't necessarily view it that way, who view most overseas civil society, most overseas NGOs and foundations as being contributory and valuable for China, but the position you are articulating the Trojan horse position is a position that has achieved policy dominance in China, especially since 2015, 2016, from the point of view of those who want to constrain and control the work of foreign organizations in China, especially foreign organizations that support human rights advocacy and areas like this in China. This has been a successful change from their point of view in China, foreign organizations have much less freedom of movement in China now than they did before.

PROF. SIDEL:

They have to get virtually every activity and every change of activity approved by the Chinese government. Every such foreign organization has to have a domestic partner organization, which in fact, which in effect is assigned to watch over what it does and to approve on a step by step basis, almost everything they do in China. So from the perspective of the Chinese government, the Chinese communist, this controlling policy perspective has been quite successful in narrowing the work that foreign organizations can do into a collection of activities, charitable activities, which is acceptable to the government.

TURNER:

What are some of those acceptable things that they can do?

PROF. SIDEL:

There's actually a whole range. If you want to work with Chinese organizations on building rural schools, China will support you in doing that. If you want to work with Chinese organizations in building rural health clinics, China supports that if you want to work with Chinese partner organizations in providing school lunches for kids. Additional, in some cases, pension or old age payments to the elderly, traditional charitable activities like that, China's okay with that. They're still watching very carefully, but they're okay with that. When you go beyond that, when you toward the support for environmental advocacy organizations that are trying to Sue or protest against the government for environmental issues or labor issues or broader human rights issues. At that point, if you're a foreign organization, China is in effect now saying that's outside. What we will allow you to do will let you do the traditional charitable activities under close watch, but we're not going to let you go beyond that.

TURNER:

I see. Thank you. Yeah. A bright line seems to have been drawn in recent years about what you can do and what cannot be done. So let's shift to your second article. Your second article is titled "Securitizing overseas, nonprofit work in China, five years of the overseas NGO law framework and it's through application to academic institutions," which was published in NYU Law School's US Asia Law Institute Perspectives in November, 2021. In this article, you dive further into the securitization and the first five years of the NGO law framework that we've been discussing already. So what constraints has this law placed on Chinese academic institutions in particular?

PROF. SIDEL:

When these new constraints, which is called the overseas NGO law was adopted in China and enacted in China in 2016 and became effective in 2017, there were some protests and grumbling from within Chinese institutions about that. The loudest voice opposing these new controls, these new restrictions on overseas, philanthropic activity in particular were Chinese academic institutions, which felt that in order for China to grow and in order in China to become powerful in the world, Chinese academic institutions needed as few controls, as few constraints as possible in their collaborative activities with their foreign counterparts. And so they were able to work out what I call and others have called a carve out from this restrictive legislation, which allowed them to continue their academic exchanges with universities, research institutions, medical schools, foundations, and other groups abroad. In effect, they were given some more freedoms in 2016, 2017 to continue their and cooperative activities.

PROF. SIDEL:

That's begun to change in recent years, as the Chinese security authorities have exercised more and more control over overseas non-governmental organizations and foundations in China, they have begun to reach out to Chinese academic institutions and to impose new restrictions on the work that Chinese academic institutions can do with their foreign counterparts. So particularly in the last year or so, we are seeing more and more controls restrictions on Chinese universities, Chinese research institutions, and what they can do with their foreign counterparts.

TURNER:

In your article, you do mention the carve out, but you call it the carve out that never was. Why would you call it that?

PROF. SIDEL:

There was a formal carve out for Chinese academic institutions doing their collaborative work with their foreign colleagues in the overseas NGO law overseas non-governmental organization law that was adopted in 2016 in response to the protests and complaints by Chinese academic institutions, a new article, Article 53 was introduced into that legislation, which gave, gave them supposedly the continuing power to engage in these exchanges and collaborations. But in reality, the process of constraining Chinese academic institutions in their work with foreign counterparts in their work with foreign foundations began pretty shortly within a year or two, after that legislation was passed. So informal textual terms. yeah, there was a carve out from the law, but the Chinese security authorities are very powerful in China. And despite that, so called carve out, they began to restrict and stream what the Chinese academic institutions could actually do in terms of foreign collaboration.

TURNER:

So what will be the ongoing legacy of this securitized foreign investments, not just in academia, but at large?

PROF. SIDEL:

We are seeing over time, and it's impossible to know whether it will continue for years and years or at some point, whether there'll be a change, but we are seeing a gradual disengagement of China from the world and of the world from China. If you think back to 10 or 15 years ago, the range of interaction in the nonprofit world, in the university and academic world in a variety of business contexts between the outside world in China was exceptionally strong, exceptionally engaged. We are seeing some disengagement in that activity, and that has occurred really at every point in past 10 years. And it is occurring today.

PROF. SIDEL:

So one legacy of this process is that we're just seeing less contact. The groups that I work with, the conferences that I go to. We used to have a lot of Chinese colleagues coming to that. We used to have more Chinese visiting scholars coming to the University of Wisconsin-Madison and other institutions that is all more difficult now. So the raising offenses, the raising of walls on both sides, although I happen to focus more on the Chinese side of this, that's an ongoing legacy of these controls and constraints and restrictions.

TURNER:

One that really stuck out to me, I was watching the Winter Olympics a couple months ago, and just thinking of the comparison between the Beijing 2008 Summer Games and the recent Winter Olympics, it felt very stark.

PROF. SIDEL:

Absolutely it, and Beijing 2008 in Chinese terms was already beginning to be somewhat constrained, but it was much more constrained now. And part, of course, because of the COVID context, but also because of the general political context as well.

TURNER:

And this next question is kind of an unfair one, but I'm going to ask anyway, do you anticipate any changes to these NGO laws in the coming years?

PROF. SIDEL:

In China? I really don't. I have to say, I think this process of separating China from the world and the world separating from China is ongoing and absence some change in, for example, the bilateral relationship between the United States and China or other bilateral relationships or the international situation. I don't see changes to these frameworks occurring in a positive direction in the coming years. Having said that there is tremendous pent up demand in the United States, in China, in Europe and other parts of the world for continued and strengthened collaboration with China. So there are those on both sides of that wall, if you will, who would like to be able to do more with each other, those constituencies will always be there, but it's been very difficult over the past 5, 6, 7 years over the past 10 years altogether. And I don't anticipate any short term or medium term significant change for the better.

TURNER:

Are there other countries that have also limited foreign investments in nonprofits and philanthropic organizations?

PROF. SIDEL:

Yeah, we do have that and it tends to be countries that have more authoritarian governments. We could cite for example, Vietnam, which has been cautiously, carefully open to overseas non-profits, non-governmental organizations and foundations, but with some of the same kind of constraints, as in China, Vietnam's very careful to not allow overseas organizations, for example, to do much work on human rights or rights advocacy in Vietnam. Another example, which is at least ostensibly, a democratic country is India, but India has a very strong legislative and regulatory framework for controlling the fiscal investments that overseas foundations and other groups make into India for Indian nonprofit organizations. That's a framework that has been in place since the mid-1970s.

PROF. SIDEL:

It goes back a very long way and it makes it very difficult for overseas nonprofit groups, even relief and humanitarian groups to operate in India. So there's a number of these examples around the world. And as we see the rise of more authoritarian governments around the world and the retreat of some democratic principles in a number of countries around the world, these walls are going up in terms of these enhanced strengthened frameworks for keeping overseas ideas, nonprofit organizations, and foundations out.

TURNER:

You mentioned that the regulatory and administrative rules in India might go back, go back to the 1970s. Are there any origins of decolonialization?

PROF. SIDEL:

There are. India going back to earlier, to colonial times, India had always had a strong, robust framework for controlling associational, nonprofit, civil society entities, but a good deal of its framework for

controlling the work of foreign foundations and foreign nonprofits in India really comes out of the 1970s and political conflict in India. And they desire, as in China, in more recent years to keep foreign organizations out of political and rights oriented developments in India.

TURNER:

Okay, thank you for clarifying. So are these other countries, India, Vietnam, are they following China's lead or are they developing unique restrictions based on their own country's experiences?

PROF. SIDEL:

In most cases, these restrictions on the work of foreign organizations are not so much following China's lead as they are authoritarians with similar worldviews. And they are concerned about human rights organizations from abroad. They're concerned about human rights ideas from abroad. And so in terms of the question you ask, it's more restrictions based on their own country's experiences. Having said that there is no doubt that places like Vietnam, Thailand, Myanmar, and other places have looked with interest at the Chinese experience in recent years. And the ways in which China over a period of about now six years has successfully cored and constrained the overseas NGO and foundation community, and is allowing it to stay in China, but only allowing it to do the exact things that the government wants it to do. There is interest in that experience and in the success from the Chinese perspective or the Chinese government perspective, the success that China seems to be having in constraining those organizations.

TURNER:

I see. So there's a sign of success and there's a common thread of rising authoritarianism that might lead to what looks like a parallel limitation on foreign investment NGLs?

PROF. SIDEL:

Absolutely.

TURNER:

So what do you most hope readers take away from your work in this area?

PROF. SIDEL:

This is one aspect of work I do on nonprofits and philanthropy in which I've been concerned in the United States, but in Asia and other places as well about the relationships between governments and the nonprofit community and how much governments will let the nonprofit community engage in a daily civic life in their countries, whether that's in Australia or the US, China or other countries. So I think what I most hope readers will take away with, from the work is a sense for how strong governments are and how concerned governments are about the work of nonprofit organizations and how fearful some governments sometimes are about their ability to control those organizations and to, in some cases like China or Vietnam retain power. So I think that's at least to some degree, what I hope readers will take away from the work.

PROF. SIDEL:

I also hope that readers won't take an entirely pessimistic view from the work, despite the strength of China's restrictions, despite the strength of India's restrictions. India has a thriving nonprofit sector. China continues to have hundreds of thousands of domestic nonprofit organizations of its own and to let

the foreign sector do some work in the country. So while I'm discussing constraints and controls and restrictions, I don't mean to paint an entirely pessimistic process.

TURNER:

Related question I do have, is how does the United States treat foreign NGOs when they are working here?

PROF. SIDEL:

We are pretty open to the work of foreign NGOs and foreign foundations in the United States. In general, what we do is for the most part, we subject overseas organizations that want to work in the United States to the same kinds of governance and legal frameworks that US organizations are subject to. So in some cases they can work directly in the United States and other cases, it winds up being better for them from a governance and legal perspective to actually establish a US organization and to do their work with and through a US organization. But as you might expect, we are somewhat less restrictive in terms of the controls we place on overseas, civil society groups, working in the United States. One thing we do do, which I don't think is a bad thing myself, is that we do place some restrictions on the ability of foreign organizations in foreign individuals to become influential in the US electoral process. That's something that a lot of countries do. It's something we do as well. And I don't think that's a bad thing.

TURNER:

Right, I don't think I could hold that against China, India, the US, or anyone to say foreign NGO. We draw the line at influencing any elections. Completely understandable there, I have to agree. Where can researchers find more of your work?

PROF. SIDEL:

I wind up doing work in a variety of sort of outlets. Like most of the interviewees you've had on this, I do work in traditional law journals, law reviews, things like that, but increasingly over the past, what, 10 years or so, I've done more work in public policy forum in, I don't want to say popular because you don't get that many readers, but in policy journals, shorter form journals, journals for the field that are intended to influence policy and wherever possible, I'm working in the countries themselves, China, India, Vietnam, and trying to express viewpoints there as well. So it's a variety of things. And in that context, as you may be going to bring up things like the repository at Wisconsin and the various ways in which people can find work around the world have been very useful.

TURNER:

Sure. And of course the repository here, we strive to include everything that Professor Sidel publishes and he is a prolific author, and I suggest you check him all out in the repository. It's really fascinating just as this whole interview was, we'll linked to all that scholarship on our podcast page. Thank you very much for joining the podcast today, Professor Sidel, what a great conversation.

PROF. SIDEL:

Thank you. It's been a pleasure.

TURNER:

This transcript was exported on Apr 25, 2022 - view latest version [here](#).

We've been speaking with Professor Mark Sidel about the recent trend in governments, restricting foreign investments, grants, and donations to nonprofit and philanthropic organizations. The two articles we discussed today, along with all professor Sidel's work can be found in our law school digital repository, those articles again are "Overseas NGOs and foundations, and COVID in China," published in EURICS in July of 2021 and "Securitizing overseas, nonprofit work in China, five years of the overseas NGO law framework and its new application to academic institutions" published in USALI Perspectives in November of 2021. The full text of these articles are also linked on our podcast page. Thank you all for listening. Catch up on our previous podcast [wilwandaction.law.wisc.edu](http://wilwandaction.law.wisc.edu), and stay up to date on Wisconsin Law School scholarship by subscribing to this podcast by the Apple iTunes store or follow either @Wisconsin Law or at @UW Law Profs with an S on Twitter, see you next time and happy researching.