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Don't use a Cannon to Kill a Mosquito: Overreaction and Genuine Criticisms of Confucius Institutes in the United States

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Don't use a Cannon to Kill a Mosquito:
Overreaction and Genuine Criticisms of Confucius Institutes in the United States

“The Cold War isn't thawing; it is burning with a deadly heat. Communism isn't sleeping; it is, as always, plotting, scheming, working, fighting.”
- President Richard M. Nixon¹

“China can be a source of stability and help to underwrite international norms and codes of conduct. I want certainly to continue cultivating a constructive relationship with the Chinese government, but we're going to continue to be firm in insisting that they operate by the same rules that everybody else operates under. We don't want them taking advantage of the United States.”
- President Barack H. Obama²

“The communists are coming!” McCarthyism and the red scares of the 1950s have left a lasting impression in the American conscious. Despite the initial fear, the United States (“US”) did calm its reactionist political tendencies and become a bit more tolerant toward socialist and communist political groups. This calming was in part because the communists were not, in fact, coming. They were fighting proxy wars in far off places like Korea or Vietnam. Only the Cuban Missile Crisis represented a real threat to US national security on the mainland. However, with the rise of Confucius Institutes (“CIs”), the threat of communists in America has again become an issue.

The goal of CIs is to educate the public about the Chinese language and culture. CIs are usually set up in one of two ways: a Confucius Classroom can be attached to a primary or secondary school, or a CI can be partnered with a university. Despite the fairly innocuous means being used people are suspicious of CIs and their potential “true” mission. It does not help that

¹ BrainyQuote: BookRags Media Network (last visited Feb. 24, 2013)
<http://www.brainyquote.com/quotes/quotes/r/richardmn402998.html>.

² Barack Obama, *President Obama Holds a Press Conference at the APEC Summit*, The White House (Nov. 13, 2011), <http://www.whitehouse.gov/photos-and-video/video/2011/11/13/president-obama-holds-press-conference-apec-summit#transcript>.

CIIs are funded in part by the Ministry of Education, a branch of the communist government of the People's Republic of China ("China").

Despite concerns about CIIs that have been expressed and written about over time, the demand for them continues to grow. The opinion that CIIs are communist propaganda machines out to destroy America is no longer the dominant reaction.³ As CIIs have grown and developed in host countries other problems have emerged. These issues include academic freedom and hiring discrimination. These problem areas are more concrete and actualized than the issue of propaganda, and can represent a real threat to the continued presence of CIIs in the US.

This paper makes the argument that these issue areas – academic freedom, propaganda, and employment discrimination – which have emerged from the continued operation of CIIs are not happenstance, but stem from conflict between CIIs' mandates and US jurisprudence. Conflicts arise when CIIs follow their own constitution and bylaws, resulting in outcomes that violate US jurisprudential norms. These areas have some basis in the US Constitution, but also stem from the entire scheme of US legislation and cultural norms. Even though there are potential conflicts, CIIs remain a positive opportunity for the American public to learn more about China and its language. CIIs need to be allowed to continue to operate because of the benefits that they offer. With the potential conflicts in the minds of the US government and partner universities, CIIs should be eased into compliance with both US jurisprudence and with CIIs' constitution and bylaws.

This paper proceeds as follows. Part II looks at CIIs and where they come from – following the money to show to whom they answer and how they are structured. Part III examines the discussions surrounding CIIs and organizes the debates and literature into problem areas. Part IV makes the argument that the problem areas are not as simple as they might seem,

³ See discussion *infra* Part III on propaganda.

but in fact are conflicts between the US constitution and the constitutions of CIs. Part IV also details the mandates in the constitution that CIs follow and demonstrates how they conflict with norms from US jurisprudence. Part V describes the continued benefits of the CIs and shows why and how they need to be maintained and guided in the future to ensure that their mission of cross-cultural learning is continued without conflict, or at least mitigated consequences. Part VI summarizes this paper and restates the conclusions.

Part II: The Structure and Purpose of Confucius Institutes

Confucius Institutes are legitimate educational programs. This may not seem like a controversial statement, but there is a debate about the purpose of CIs and what their potential influence could be in the US.⁴ This section does not examine theoretical discussion about the goals that CIs accomplish, but instead focuses on the structure of the CI organization and the openly stated goals of the organization.

CIs are under the guidance of the Office of Chinese Language Counsel International (Hanban),⁵ a “public institution affiliated with the Chinese Ministry of Education.”⁶ The official Hanban website claims that Hanban is a subsidiary of the Ministry of Education with its own divisions and organizational structure.⁷ While there are CIs all around the world,⁸ they are all organized and run by this central organization.⁹

⁴ See discussion *infra* Part III on literature and theories about soft power and public diplomacy.

⁵ James F. Paradise, *China and International Harmony: The Role of Confucius Institutes in Bolstering Beijing's Soft Power*, 49 *Asian Survey* 647, 648 (2009).

⁶ Hanban: About us, http://english.hanban.org/node_7719.htm (last visited Mar. 24, 2013).

⁷ *Id.*

⁸ Hanban: Confucius Institute Headquarters - http://english.hanban.org/node_7716.htm (last visited Mar. 24, 2013); see also Paradise, *supra* note 5, at 648 (discussing the wide range of countries that have CIs in them).

⁹ Hanban: Confucius Institute Headquarters *supra* note 8.

Chapter Three of the “Constitution and By-Laws of the Confucius Institutes” describes the headquarters and organizational structure for the CIs.¹⁰ Specifically Article Twelve provides that “the headquarters is the regulatory body that provides guidelines to the Confucius Institutes worldwide[, and] is located in Beijing.”¹¹ The Council that governs the Headquarters consists of “the Chair, the Vice Chairs, the Executive Council Members, and the Council Members[, who are] recommended by the education administrative agency of the Chinese State Council and approved by the State Council.”¹² The State Council is the highest state executive organ in China.¹³ This means that even though Hanban is only “affiliated” with the Ministry and official government of China, its Council is entirely made up of members that are appointed by the Chinese government. This Council for Hanban – wholly made up of party appointed members – orchestrates and manages CIs across the globe. Any fears that CIs are working with the Chinese government are well founded. While not technically a part of the larger governmental structure, there are many strong connections.

There are some who disagree with the proposition that the Ministry of Education funds CIs. They instead claim that the funds are “laundered through [the Ministry of Education] from the [Chinese Communist Party’s Propaganda Department]’s External Propaganda Department.”¹⁴ While most of the literature does not take this position,¹⁵ it does feed into reactionary and paranoid feelings about CIs.¹⁶ According to this viewpoint, CIs are a type of Trojan horse,

¹⁰ Constitution and By-laws of the Confucius Institutes, english.hanban.org, http://english.hanban.org/node_7880.htm (last visited Mar. 24, 2013).

¹¹ *Id.*

¹² *Id.*

¹³ The State Council, english.gov.cn, <http://english.gov.cn/links/statecouncil.htm> (last visited Mar. 24, 2013).

¹⁴ David Shambaugh, *China’s Propaganda System: Institutions, Processes and Efficacy*, 57 *The China Journal* 25, 49–50, (2007).

¹⁵ See discussion *infra* Part III of the literature and debates about the purposes of CIs. Significantly, this is the only article that the author found that advances this proposition.

¹⁶ See *infra* Part III for reactions to CIs including paranoid and nationalist viewpoints regarding CIs.

designed to spread China's power along with its language and culture.¹⁷ Instead of being partly legitimate educational institutions, CIs are solely vehicles for propaganda without any benefits for the host countries. The Ministry of Education is, of course, not above the influence of the Chinese Communist Party's ("CCP") propaganda machine. While this view may have some basis in reality, the general consensus is that Hanban is a subsidiary of the Ministry of Education.¹⁸ The funding scheme for CIs is described in Chapter Five of the CIs' constitution and bylaws, which provides that the individual CIs and the "Chinese Parties" supply funds.¹⁹ Despite some relatively unfounded ideas of ulterior motives, it is fairly simple to determine where CIs receive their funding.

In contradiction to what conspiracy theorists might think about them, CIs have a potentially beneficial and fairly innocuous purpose. Hanban, the organization leading and controlling CIs, states that they are "committed to providing Chinese Language and cultural teaching resources and services worldwide . . . and contributing to the development of multiculturalism and the building of a harmonious world."²⁰ This language of Hanban's purpose is echoed in the Constitution and Bylaws of Confucius Institutes.²¹ This purpose is quite similar to that of the Goethe Institutes and the Alliance Francaise, the German and French equivalents to the Chinese CIs.²²

¹⁷ See Shambaugh, *supra* note 13, at 50 (describing CIs as "no strings attached" funds with the purpose to promote China's soft power and cultural image).

¹⁸ Hanban: Confucius Institute Headquarters, *supra* note 8 (setting out clearly the goals and management of Hanban and CIs); Constitution and By-laws of the Confucius Institutes, *supra* note 10 (same); See e.g. Paradise, *supra* note 5, at 648 (describing Hanban as a "a non-profit public organization affiliated with the Ministry of Education.").

¹⁹ Constitution and By-laws of the Confucius Institutes, *supra* note 10.

²⁰ Functions of Hanban, english.hanban.org, http://english.hanban.org/node_7719.htm (last visited Mar. 24, 2013).

²¹ Compare Constitution and By-laws of the Confucius Institutes, *supra* note 10, with Functions of Hanban, *supra* note 19.

²² See Our Mission, afusa.org, <http://www.afusa.org/> (last visited Mar. 24, 2013) (stating that part of the mission of Alliance Francaise is "to support French language and French speaking cultures as they are practiced around the globe"); About us, Goethe.de, <http://www.goethe.de/uun/enindex.htm> (last visited Mar. 24, 2013 (stating in the mission of Goethe institutes, "[w]e promote the study of German abroad and encourage international cultural exchange. We also foster knowledge about Germany by providing information on its culture, society and politics."));

CIIs are mandated by their Bylaws and Constitution to “abide by the laws and regulations of the countries in which they are located, respect local cultural and educational traditions and social customs, and they shall not contravene concerning the laws and regulations of China.”²³ This means that in addition to being under the guidance of the Ministry of Education – a part of the Chinese government – CIIs are supposed to act according to the local laws and norms of wherever the CI operates.²⁴ What this means and what this ought to look like is discussed below in Part IV and V.

Hanban has a couple of ways to create institutes around the world to carry out its mission. CIIs are not the most common means, with Hanban reporting only 322 CIIs to 369 Confucius Classrooms.²⁵ Confucius Classrooms are junior versions of CIIs with a focus on primary and secondary education.²⁶ CIIs, on the other hand, are focused on the university level, and can be formed and operated three different ways: by the Hanban headquarters, by a partnership between the Hanban and a local university, or entirely locally.²⁷ The most common means for creating a CI is a partnership between a foreign and a Chinese institution.²⁸ Another difference between CI and Confucius Classrooms is that CIIs are linked to one university, while Confucius Classrooms

see also Yiwei Wang, *Public Diplomacy and the Rise of Chinese Soft Power*, 616 *Annals Am. Acad. Pol. & Soc. Sci.* 257, 265 (2008) (mentioning these two programs as examples that Hanban followed in creating CIIs).

²³ Constitution and By-laws of the Confucius Institutes, *supra* note 10.

²⁴ *See* discussion *infra* Part III and Part IV on the literature about potential conflicts and how the conflicts are created.

²⁵ Confucius Institute/Classroom, English.hanban.org, http://english.hanban.org/node_10971.htm (last visited Mar. 24, 2013).

²⁶ *See* Don Starr, *Chinese Language Education in Europe: The Confucius Institutes*, 44 *European Journal of Education* 65, 71 (2009) (describing a Confucius Classroom as a “junior version of the Institute aimed at secondary education rather than the university sector.”).

²⁷ *See Id.* at 70.

²⁸ *See* Paradise, *supra* note 5, at 651 (stating that CIIs are “typically” the result of a partnerships arrangement between a CI and a university).

serve multiple schools.²⁹ CIs and Confucius Classrooms are the two ways that Hanban carries out its mandate abroad.³⁰

The connections between CIs and the Chinese government, and by extension the CCP, are apparent. They are connected to the CCP because of how their directors are chosen. CIs are controlled by Hanban and are used to promote the Chinese language and culture abroad. These connections are obvious and written in their constitutions. Their goals and structure are laid out clearly and do not seem to disguise a secret intent.

Part III: Literature on, and Reactions to Confucius Institutions

Much has been written about the potential and real effects of CIs. This literature review not only examines academic literature and studies of CIs and their effects, but also less academic sources for viewpoints that are addressed in the academic literature. First, this section looks at theoretical discussions on why CIs have been created and continued. Second, it examines the potential and real problems that come along with CIs, including the organization of the potential problem into groups that provide a new structure of the literature. This paper posits that the new structure is a convenient and beneficial means to understand the literature on CIs.

China has an image problem.³¹ China is a growing economic power in the international system, but that level of power and historical position has not translated to affection from foreign publics.³² Some of its problems include that the Chinese are too humble to promote China abroad, the country has focused on international position and neglected its international image, and the Chinese people assume that China is respected for its history when that does not

²⁹ See Starr, *supra* note 25, at 71.

³⁰ See Confucius Institute/Classroom, *supra* note 24 (describing Confucius Classrooms and CIs as the two means that Hanban uses in its mission).

³¹ See Wang, *supra* note 21, 261–2 (laying out five different misconceptions that the Chinese have about their international image and four paradoxes in “the West’s” view of China).

³² *Id.*, at 261 (listing the first of the five Chinese misconceptions).

automatically occur.³³ These problems result in paradoxes in Western thought about China.³⁴

Westerners like the Chinese people and the concept of China, but dislike the government, the CCP, and even the idea of the People's Republic of China.³⁵

In order to correct its image problem, China has turned to public diplomacy. Public diplomacy is an attempt to go beyond traditional government-to-government relations and affect the populations of other states.³⁶ As a part of this effort to correct its image China turned to CIs and the teaching of Chinese to “help create the impression of a kinder and gentler China.”³⁷ This represents a big change for the Chinese government. In 1759, a foreign missionary was imprisoned for illegally learning to speak Chinese, but now the Chinese government is advocating the learning of Chinese around the world.³⁸ It is also interesting that the figurehead of this effort is Confucius, who was reviled and scorned during the not too distant Cultural Revolution.³⁹ Oddities aside, China's efforts to expand the speaking of its language are indicative of its focus on public diplomacy.⁴⁰ It would seem from the demand for CIs that the strategy works.⁴¹

³³ See Wang, *supra* note 21, at 261 (describing the misconceptions that the Chinese have about their international image).

³⁴ *Id.* at 261–62 (discussing four generalizations involving “paradoxes in the West's view of China.”).

³⁵ *Id.*

³⁶ *Id.* at 263 (describing China's ventures into soft power); See also *Id.* at 259 (discussing on the difference between US and Chinese concepts of public diplomacy).

³⁷ Paradise, *supra* note 5, at 662.

³⁸ See Hongqin Zhao and Jianbin Huang, *China's Policy of Chinese as a Foreign Language and the use of Overseas Confucius Institutes*, Educ. Res Policy Prac., 2010, at 127, 128-30 (setting out this oddity after discussing the steps that China has taken in advancing Hanban's mission around the world).

³⁹ See Starr, *supra* note 25, at 68-9 (mentioning this apparent paradox).

⁴⁰ See Wang, *supra* note 21, at 259 (describing Chinese understandings of public diplomacy in establishing the background for CIs).

⁴¹ *Id.* at 265 (discussing the inability of China to keep up with demand for CIs, and how Hanban's goal of 100 CIs around the world was quickly surpassed).

This image of a gentler China not only helps to bolster public opinion abroad, it also helps to strengthen China's soft power.⁴² Soft power is defined as "the ability to get what you want through attraction rather than coercion or payments."⁴³ There is an ongoing discussion about what the concept means and how it is applied in the Chinese government.⁴⁴ This theoretical debate about political discourse and thought in China does have repercussions on the discussion about CIs and their "true" purpose. There are people in the field of education who deny that the exportation of Chinese culture is a part of soft power expansion.⁴⁵ Nevertheless, the very idea that some deny (that CIs are not tools for propaganda) "has considerable support at the highest levels of the Chinese government."⁴⁶ This dichotomy remains an ongoing discussion in academia about the use of CIs in soft power and what their true role may be.⁴⁷

Regardless of CIs' purpose, the Chinese government is working on expanding its soft power abroad.⁴⁸ Discussions of soft power mainly regard matters of international relations, and not the domestic politics of China.⁴⁹ This demonstrates how soft power and propaganda are concepts used in China to describe foreign relations, and are not tools for its own population, at least not in the same ways as they are used on foreign populations. The ongoing discussion about the use of CIs as a tool for China to gain soft power abroad shows that there is no mechanism to determine if they are a political tool, or merely a vehicle for innocent cultural exchange.

⁴² See Paradise, *supra* note 5, at 662 (examining CIs popularity and the effect this public diplomacy strategies have on soft power).

⁴³ Joseph S. Nye, Jr., *Soft Power: The Means to Success in World Politics* Public Affairs, 2004 at x.

⁴⁴ See Paradise, *supra* note 5, at 655 n. 35 (defining hard and soft power); Cho and Jeong, *supra* note 37, at 128–132 (discussing China's soft power strategies and concepts).

⁴⁵ See Paradise, *supra* note 5, at 658 (discussing the preference for people involved in education to think of CIs as "vehicles for academic exchange and mutual understanding.").

⁴⁶ *Id.*

⁴⁷ See *e.g. Id.* at 662–665 (discussing the role of CIs in the build up of Chinese soft power, and concluding that the benefits of CIs might be cultural exchanges rather than true soft power.)

⁴⁸ See Tamara Renee Shie, *Rising Chinese Influence in the South Pacific: Beijing's "Island Fever"*, 47, *Asian Survey*, 307 (2007) (discussing China's soft politicking in the south pacific and the effects that it is having on potential and past US allies).

⁴⁹ See Cho and Jeong, *supra* note 37, at 459 (stating "soft power discussions have been conducted mainly on foreign policy.").

Whatever the “true” purpose of CIs might be, CIs have caused problems attempting to integrate into the United States. These problems can be divided and organized into three categories: propaganda issues, academic freedom issues, and hiring discrimination issues. These categorical descriptions of the literature are new to this paper, but they help organize the debates into meaningful categories that encompass the writings in each issue or problem area. The categories also are not particularly revolutionary – more akin to descriptions of the literature than classifications.

Propaganda

There are people who are venomously opposed to the introduction of CIs in their community because they view CIs as a communist vehicle for the indoctrination of children and students.⁵⁰ One case that got national publicity in the US took place in Hacienda Heights, California.⁵¹ In this example residents were concerned that a Confucius Classroom was a “propaganda machine.”⁵² Even community members without children were concerned about the potential for communist propaganda that could be hidden in the textbooks that would be unreadable to anyone who did not read Chinese.⁵³ After that incident, one author called CIs

⁵⁰ See CJ Carnacchio, *Confucius Institutes are Propaganda Centers*, The Oxford Leader (Apr. 14, 2010), http://www.oxfordleader.com/Articles-i-2010-04-14-235233.113121-sub_Confucius_Institutes_are_propaganda_centers.html (stating that “the Chinese government is still a ruthless, evil, totalitarian beast . . . and now it’s in our classrooms via a multicultural Trojan Horse.”); Steven W. Mosher, *Confucius Institutes: China Carries out a ‘Long March’ Through out Universities*, Human Events (Sept. 7, 2012, 2:52 PM), <http://www.humanevents.com/2012/09/07/confucius-institutes-how-china-is-carrying-out-a-long-march-through-our-universities-and-brainwashing-the-next-generation/> (arguing that CIs should not be permitted to educate American students); see also Ching-Ching Ni, *Chinese Government’s Funding of Southland School’s Language Program fuel Controversy*, LA Times, (Apr. 4, 2010), <http://articles.latimes.com/2010/apr/04/local/la-me-confucius-school4-2010apr04> (quoting parties on both sides of the issue discussing the introduction of a Confucius Classroom in Hacienda Heights).

⁵¹ See Socialism Studies, The Daily Show with John Stewart, (June 7, 2010) <http://www.thedailyshow.com/watch/mon-june-7-2010/socialism-studies> (last visited Mar. 24, 2013) (exploring the controversy in Hacienda Heights from a comedic angle).

⁵² Ni, *supra* note 49.

⁵³ The Washington Times, *School Activists Rail against “Confucius Classroom”*, Washington Times Online, (Apr. 27, 2010), <http://www.washingtontimes.com/news/2010/apr/27/school-activists-rail-against-confucius-classroom/?page=all> (quoting a community member without children who voiced concerns at a school board meeting).

Trojan horses and concluded their article with the following question: “Should we really be allowing a cruel, tyrannical and repressive regime that hates everything that America stands for to educate our young people?”⁵⁴ The strong statements arising from this example show that there can be animosity in the United States towards the education of students by Chinese nationals and with Chinese materials.⁵⁵

But not everyone is as extreme in his or her viewpoint. There are those who do not think that CIs are propaganda tools and/or centers for espionage.⁵⁶ One argument for a more tolerant viewpoint is that CIs’ visibility and controversy makes them unlikely candidates for spying.⁵⁷ If they are noticeable and obvious, they are lacking in the most important quality of a successful spy – not letting anyone know that you are one. Since CIs do have benefits, and do not seem like vehicles for effective espionage, some authors have concluded that their educational benefits should allow them to continue even while their propaganda effects are not certain.⁵⁸

In an article on the effects of CIs in Germany, the author did not discuss propaganda as an issue, and instead discussed other academic and speech issues about CIs.⁵⁹ This demonstrates that more recent critiques of CIs are less concerned with reacting to accusations that CIs are a

⁵⁴ Mosher, *supra* note 49.

⁵⁵ It is of note that this view of CIs being a threat because of propaganda is not unique to the US. *See e.g. The Confucius Institute: Propaganda Brought to you by Dr. Dallemand*, We Are Politics (Sept. 13, 2012), <http://www.wearepolitics.com/1/post/2012/09/the-confucius-institute-bad-food-spread-to-the-west.html> (voicing concerns about the goal of CIs and their integration into Australia).

⁵⁶ *See* Peter Mattis, *Reexamining the Confucian Institutes*, The Diplomat (Aug. 2, 2012), <http://thediplomat.com/china-power/reexamining-the-confucian-institutes/> (reasoning that CIs are not good tools for espionage); Narayani Basu, *Confucius Institutes in America, Soft Power of Propaganda – Analysis*, Eurasia Review (Aug. 8, 2012), <http://www.eurasiareview.com/08082012-confucius-institutes-in-america-soft-power-or-propaganda-analysis/> (stating that accusations that CIs were fronts for “espionage and propaganda” were “unsubstantiated.”).

⁵⁷ *See* Mattis, *supra* note 55 (noting that CIs visibility and risk associated with the investment were factors for concluding that CIs were not tools for spying).

⁵⁸ *See* Mattis, *supra* note 55 (supporting the continuance of CIs with continued monitoring); Basu, *supra* note 55 (concluding that CIs needed to be monitored). This is a similar conclusion to the one made by this paper.

⁵⁹ Christoph Ricking, *Critics fear influence of Chinese state on Confucius Institute affiliates*, Deutsche Welle (Dec. 25, 2012), <http://www.dw.de/critics-fear-influence-of-chinese-state-on-confucius-institute-affiliates/a-15688977-1> (discussing similarities between the Goethe Institutes and CIs, but not discussing fears of the propagandist effects of CIs).

propaganda machine for the feared communists. As the reactionist cries of propaganda cease being the only and most common response to CIs a more academic discussion can grow on the more likely and more substantial issues.

Critics of CIs remain concerned about the effects that CIs could have. In spite of this, discussion has generally moved beyond the simple debate over whether CIs are tools for propaganda or not. Yet, despite the growth of other issues in the discourse, the concern about propaganda remains.

Academic Freedom

One issue that critics have with CIs is that they can limit academic freedom at the universities and schools where they are based. CIs are in a position to limit what issues are talked about in relation to China because of the presence that they have. One of the best examples is the issue of Tibet.⁶⁰ There have been reports of talks on Tibet being limited or forbidden by CIs.⁶¹ Other issues that CIs do not permit to be discussed include the Dalai Lama, China's leadership, and Taiwan.⁶² This is a problem because academic freedom is very important to schools and universities. For example, Stanford University cited this as the reason that it refused to cooperate with instructions given to it by a CI.⁶³

⁶⁰ Daniel Golden, *China Says no talking Tibet as Confucius Funds U.S. Universities*, Bloomberg (Nov. 1, 2011, 7:02 PM), <http://www.bloomberg.com/news/2011-11-01/china-says-no-talking-tibet-as-confucius-funds-u-s-universities.html> (discussing Stanford Universities refusal to comply with Hanban's demand to not talk about issues like Tibet); D. D. Guttenplan, *Critics Worry about Influences of Chinese Institutes on US Campuses*, N.Y. Times (Mar. 4, 2012), http://www.nytimes.com/2012/03/05/us/critics-worry-about-influence-of-chinese-institutes-on-us-campuses.html?pagewanted=all&_r=2& (quoting June Teufel, "who teaches Chinese government and foreign policy at the University of Miami," listing the Dalai Lama, Tibet, Taiwan China's military buildup, and factional fights in the Chinese leadership as issues that were "off limits.").

⁶¹ See Guttenplan, *supra* note 59.

⁶² *Id.*

⁶³ See Golden, *supra* note 59.

The demand for a restriction on speech has not just been because of overt directives, but also because universities need the funds that CIs offer, and are careful not to upset the CI.⁶⁴ When CIs are supplying a lot of funding at the same time universities are looking for new sources of revenue, it can seem like a great match.⁶⁵ However, this creates a situation where a school is reliant on an organization that can demand that an issue not be discussed.⁶⁶ As a result of CIs' leverage, students and professors are not able to discuss sensitive topical issues that they would otherwise address. This leads to a situation where universities engage in self-censorship to prevent the Chinese government from cutting off their funds.⁶⁷

As a result of the universities' need for funds, CIs are an attractive option to expand curriculum and language programs. Sadly, CIs come at the cost of not being able to tackle issues involving China that might otherwise be discussed by professors, students, and guest speakers. This has been the criticism of CIs, and a reason that some institutions have not allowed their establishment.

Hiring Discrimination

CIs have been criticized for their hiring practices. As a result of a recent incident, McMaster University is closing its CI at the end of the 2013 spring semester because of hiring discrimination against a member of the Fulan Gong.^{68 69} The CI has been operating since 2008.⁷⁰

⁶⁴ See Guttenplan, *supra* note 59. (discussing the chilling effect CIs can have on departmental conversations).

⁶⁵ See *i.e.* Josh Chin, *U.S. Rule Puts Confucius Schools Under Spotlight*, The Wall Street Journal (May 24, 2012, 5:11 PM), <http://blogs.wsj.com/chinarealtime/2012/05/24/u-s-rule-puts-confucius-schools-under-spotlight/> (noting that there are more than sixty universities in the US with CIs, and Hanban has spent more than \$500 million on the creation of CIs); Elizabeth Redden, *Confucius Says...*, Inside Higher Education (Jan. 3, 2012, 3:00 AM), <http://www.insidehighered.com/news/2012/01/04/debate-over-chinese-funded-institutes-american-universities> (discussing the cutting of government funds for Universities and the convenience of funds from CIs).

⁶⁶ See Golden, *supra* note 59 (noting where a visit by the Dalai Lama was canceled in part by pressure exerted by the school's CI).

⁶⁷ Oxford Daily Brief Service, *Confucius Institutes Exert Soft Power*, Oxford Analytica Ltd., (Jul. 24, 2006) (noting the potential for self-censorship if universities choose not to discuss issues in order to placate CIs).

⁶⁸ See Omid Ghoreishi, *Canadian University to Close Confucius Institute*, The Epoch Times (Feb. 7, 2013), <http://www.theepochtimes.com/n2/canada/canadian-university-to-close-confucius-institute-345521.html> (discussing the case of Sonia Zhao).

In this case, a worker had to “hide her beliefs from her coworkers and was afraid to be herself. After her term at the CI ended in 2011, she filed a human rights complaint.”⁷¹

Another example of discrimination against the Fulan Gong occurred in Australia.⁷² The hiring practices of Hanban meant that employers could not hire people with connections to the Fulan Gong, or even those who are engaged in activities that the Chinese government considers criminal.⁷³ These include “a range of groups that participate feely in Australian society, including various Christian churches, pro-democracy groups, or Tibetans who maintain links to the Dalai Lama.”⁷⁴

While the one case where employment discrimination was litigated occurred in Canada, this issue can occur in the US. As a result of the hiring practices of Hanban, there is a possibility of a suit similar to the McMaster University case anywhere employment discrimination is prohibited. Hiring discrimination based on religion is not allowed with the US.⁷⁵ Hanban runs all of the CIs around the world under the same laws and constitution. It is not a stretch to think that a similar situation involving hiring discrimination could occur in the US. If it were to occur, a university or school could be at fault for discrimination.

⁶⁹ See generally *Brief Introduction to Fulan Dafa*, FulanDafa.org, <http://en.falundafa.org/introduction.html> (last accessed Apr. 20, 2013) (introducing the Fulan Gong as “an advanced practice of Buddha school self-cultivation, founded by Mr. Li Hongzhi, the practice’s master.”).

⁷⁰ See Ghoreishi, *supra* note 68

⁷¹ *Lawyer says Confucius Institutes Should Follow Hiring Practices of Host Countries*, New Tang Dynasty Television (Feb. 8, 2013, 12:15), <http://ntdtv.org/en/news/china/2013-02-18/lawyer-says-confucius-institutes-should-follow-hiring-practices-of-host-countries.html>.

⁷² See Sonya Bryskine, *Confucius Institutes Pose Workplace Discrimination in Australia*, The Epoch Times, (Oct. 10, 2011), <http://www.theepochtimes.com/n2/world/confucius-institutes-pose-workplace-discrimination-in-australia-62629-all.html> (discussing workplace discrimination promulgated by CIs on members of the Fulan Gong, including having the express requirement for employees to have “no record of participation with the Fulan Gong.”). The article also discusses the legal effects of this discrimination and warns that local employers could open themselves up to liability by permitting this discrimination.

⁷³ *Id.* (noting China’s other discriminatory policies).

⁷⁴ *Id.*

⁷⁵ See Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1) (mandating that “It shall be an unlawful employment practice for an employer--(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his . . . religion.”).

Conclusion

The three groups of literature – propaganda, academic freedom and hiring discrimination – are new to this paper, while the works reviewed in them are not. The problems that have arisen involving CIs have developed in such a way that they can be organized into this structure: CIs encounter resistance from host communities when they appear to be a tool for propaganda, furthermore when they restrict the freedom of speech at universities where they are located, and when they engage in hiring discrimination. The benefit of organizing the problems and literature into these categories is discussed below in Part IV. At this point it is of note that the problems do fit in these categories because the labels are just that, and not reclassifications of the literature. When the problems are grouped by issue area it would be clear if another issue area arose or if simply another facet of a previously discussed area had been discovered.

Part IV: Problem Areas are both Constitutional in the US and Mandated by Hanban

CIs are called to “abide by the laws and regulations of the countries in which they are located, [and to] respect local cultural and educational traditions and social customs”⁷⁶ while not “contraven[ing] concerning the laws and regulations[of China.]”⁷⁷ Unfortunately for CIs, they are failing at that goal. There have been problems (as discussed above) that stem from the enforcement of CIs’ mandate not to be involved in Chinese domestic politics, but this has the unfortunate problem of interfering with US cultural and educational customs. The three different problems that CIs have are all based of cultural differences between CIs and the American culture in which they operate. Cultural clashes are one thing, but they become more serious problems when CIs and their operation conflicts with American constitutional standards and jurisprudence. Unfortunately, this is exactly the type of conflict that is occurring, and it is only

⁷⁶ See Constitution and By-laws of the Confucius Institutes, *supra* note 10.

⁷⁷ *Id.*

exacerbated by the CIs' inflexibility because of their obligations to obey and follow their constitution and bylaws.

While not all of the problems areas stem from conflicts between the US constitution and Hanban's, the issue areas have at least some constitutional leanings, and remain part of the jurisprudence surrounding American cultural norms.

Propaganda

It is an American ideal to get a meaningful education and not to get brainwashed. What makes up an education, and the literature that goes into one has been the source of constitutional discussion in the US.⁷⁸ Americans are wary of threats from within the country and aim to protect students from educational threats. It makes sense that people would react negatively when there is suspicion that an "enemy" culture – communism – could be brainwashing students in American schools. Similarly, the issue of freedom of speech and what that means in schools – including what is taught there – is a constitutional concern that is a part of American jurisprudence. Freedom of speech and how much students have, has been a keenly litigated issue in US constitutional jurisprudence, in part because of the malleability of students mind and the understanding that education is required and important in the US.⁷⁹

The fear of the potential for unrestrained governmental control over citizens is not only a current cultural touchstone in the US, but was central to the founding of the US. The American Revolution was fought over this issue. The Constitution and the republication system of government it creates are based on limited government and personal liberties.⁸⁰ The idea that

⁷⁸ See *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 855 (1982) (discussing what students could and could not read for education).

⁷⁹ See *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) (debating student's right to protest); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988) (debating students First amendment protections in an extracurricular activity).

⁸⁰ See U.S.C. Const. Art I–III (defining systems of government with enumerated powers); U.S.C. Const. Amend. I–X (setting out the Bill of Rights and their protections for personal liberties).

propaganda can control people and restrict freedom for the benefit of the government is threatening to Americans, who are quick to criticize their own government for engaging in propaganda.⁸¹ Tensions on this issue are illustrated in conflicts between the power of state and federal governments, which continues to be an issue in constitutional jurisprudence.⁸² Americans are jealous of the power given to governments. Because of this fear of being controlled, US citizens are worried about propaganda both from within, and outside their country. CIs' communist backgrounds play right into these fears.

Part of what makes CIs such a threat to Americans is that they are closely related to the government of China and the CCP. While Hanban tries to distance itself from the CCP by stating that they are merely affiliated with the Ministry of Education,⁸³ its connection is much closer than that statement makes it seem. The Council of Hanban is chosen by the CCP (indirectly through members of the State Congress) and this relationship is mandated by the constitution and bylaws of CIs.⁸⁴ Consequently, it is not unreasonable to think that CIs are a tool of the Chinese government. They are run by appointees of the government and are funded in part by the government of China. But this is not a choice that CIs have made; they are required to be organized this way. While this does not mean that US schools should welcome CIs automatically, it does mean that US schools and universities can enter into agreements with CIs knowing their background and recognizing what that means to the relationship between the partners.

⁸¹ For illustration the author googled "Obama propaganda" and the first two results were a claim that a news source was engaging in propaganda against the government, and the other claimed that the president was engaged in propaganda. See Google, google.com (Mar. 12, 2013) <https://www.google.com/search?q=f&sugexp=chrome,mod=8&ix=h9&sourceid=chrome&ie=UTF-8&q=obama+propaganda>.

⁸² See *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2572 (2012) (discussing the distinction between state and federal government limiting defined powers as one of the foundational issues before addressing the main question).

⁸³ See Functions of Hanban, *supra* note 19.

⁸⁴ See Constitution and By-laws of the Confucius Institutes, *supra* note 10.

Fears of propaganda stem (in part) from constitutional ideas in the US and this causes problems when CIs are accused of being tools of indoctrination. This fear results in tensions between the US and China. Unfortunately for CIs there is no way for them to distance themselves from the Chinese government. It is a part of their constitution to be established in this manner.

Academic Freedom

Like anti-propaganda sentiments, academic freedom is linked to the protection of freedom of speech in the US constitution. While there are not express constitutional mandates, the Supreme Court has been explicit on academic freedom and its importance as a part of freedom of speech.⁸⁵ Most poignantly, the court said, “[o]ur Nation is deeply committed to safeguarding academic freedom. . . . That freedom is therefore a special concern of the First Amendment. . . . The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.”⁸⁶ While academic freedom is not in the constitution directly, it is a part of American jurisprudence. This means that it has a place in the landscape of interwoven constitutional ideas. Much like the right to privacy, it is not explicit, but is instead inferred from the constitution.⁸⁷

It can be a problem with CIs that they seek to limit the range of discussions that can take place within a university. While the freedom of speech issues apply most directly to public universities and schools, the jurisprudential issues in this case also apply to private institutions.

Potentially as a result of this, there is not a separate discussion in the literature on the effects of

⁸⁵ See *Sweezy v. State of N.H. by Wyman*, 354 U.S. 234, 250 (1957) (discussing the role of academic freedom when a professor at the University of New Hampshire failed to respond to answer questions posed by the Attorney General); *Keyishian v. Bd. of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 603 (1967) (discussing the importance of academic freedom in a case involving subversive actions by a university employee).

⁸⁶ *Keyishian*, 385 U.S. at 603 (1967) (citation omitted).

⁸⁷ See *Roe v. Wade*, 410 U.S. 113, 152–155 (1973) *holding modified by Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833 (1992) (discussing the Right to Privacy and its historic background in Constitutional jurisprudence).

CIIs' restriction on academic freedom in a private institution as compared to a public one.⁸⁸ When CIIs prevent conversations about issues that China deems to be too sensitive (such as Tibet, Tiananmen Square, or the Dalai Lama) that restricts academic freedom. Since it is a free speech issue, people and universities can react negatively regarding the restriction of a constitutional ideal. This can lead to conflicts between universities and CIIs even when CIIs carry a potential investment worth millions of dollars.⁸⁹ It is the right to freedom of speech that is infringed upon when CIIs make demands of the universities.

As mentioned above, money makes CIIs powerful. When CIIs come with funds attached for universities, limiting discussion of certain topics can seem like a small price to pay. This fundamentally violates the ideal of academic freedom.⁹⁰ Accordingly, this paper will discuss what universities should do and how they should respond to these issues – issues that have their roots in constitutional ideals.⁹¹

Article 6 of the Constitution for CIIs states that they are not to “contravene concerning the laws and regulations of China.”⁹² Given that, and the fact that CIIs are controlled and funded in part by the CCP, it is incredibly difficult for them to not do as instructed. One of the things that CIIs are told to do is to not to talk about certain sensitive issues.⁹³ CIIs do not independently choose to restrict speech, but are instead forced to do so because of their organizational structure. Since CIIs are controlled by the CCP it is unlikely that CIIs would try to break those rules.

The restriction of academic freedom is another problem area where CIIs are trapped between the conflicting ideas of their constitution and the US constitution. The ideal stems from

⁸⁸ The author was unable to find articles differentiating between public and private institutions.

⁸⁹ Golden, *supra* note 59 (noting the \$500 million that has been spent by Hanban on CIIs).

⁹⁰ See Bryskine *supra* note 71 (discussing the limiting of discussions on topics concerning China).

⁹¹ See discussion *infra* Part V on solutions to this, and other issue areas.

⁹² See Constitution and By-laws of the Confucius Institutes, *supra* note 10.

⁹³ See Golden *supra* note 59 (discussing topics that the Chinese government does not permit schools to debate).

the American constitution, but the restriction of those freedoms comes right from the Constitution of CIs.

Hiring Discrimination

The issue of hiring discrimination is new to CIs, but discrimination is not a new issue to US legislation. The Thirteenth and Fourteenth amendments to the Constitution have shaped the American landscape with regards to equality.⁹⁴ They have done so by illegalizing slavery (a central marker of racial discrimination in the US) and by enacting the Equal Protection Clause of the Fourteenth amendment.⁹⁵ In the same vein of legislation, Title VII forbids many different kinds of discrimination in the workplace by employers of more than fourteen people.⁹⁶ These different pieces of legislation seek to help enforce the idea that “all men are created equal,”⁹⁷ which, while not enshrined in the constitution itself, has been a powerful and important idea in the founding of and development of the US. Equality is an essential and central part of American jurisprudence.

It does not negate the importance of this issue area that the sole litigation of an incident of hiring discrimination by CIs took place in Canada and not the United States. If hiring discrimination based on religion is a practice that CIs are engaged in, then it could happen in the US because all CIs have the same rules under Hanban. Like Canada (and Australia), the US has laws against discriminatory behavior and it would be a problem if evidence of this practice came to light in the US. Because this is a potential issue that has social and legal support in the US, this is the third area when CIs can be in conflict with US constitutional and cultural norms.

⁹⁴ See U.S.C. Const. Amend. XIII; U.S.C. Const. Amend. XIV.

⁹⁵ See U.S.C. Const. Amend. XIII; U.S.C. Const. Amend. XIV.

⁹⁶ See 42 U.S.C. § 2000e-3.

⁹⁷ The Declaration of Independence, para. 2 (U.S. 1776).

Discrimination (and even persecution) of the Fulan Gong is a feature of Chinese domestic politics.⁹⁸ This is an area where CIs are not supposed to contravene. It makes sense that the order to not allow members of the Fulan Dong to work in CIs would be carried out since the directors of Hanban are from the CCP. Similar to the above discussion on issue areas, CIs do not voluntarily make this choice, it directly stems from their constitution and organization. They are stuck between following their constitution and violating US constitutional ideals.

Conclusion

CIs are stuck between a rock and a hard place. On one side CIs have constitutions and a means of operation that has them strongly connected to the CCP, and leaves them in no position to ignore orders from Hanban. On the other side there are strong cultural and constitutional ideas that the US public believes in. When either side's mandates from their constitution (or more general jurisprudence) are violated, CIs are in trouble. This is where the CIs problem areas stem from: competing obligations put on them by their constitutions and the US constitution. The discussion about propaganda, academic freedom, and discriminatory hiring are three different issue areas where CIs, in following their constitutions, have violated and can continue to violate US constitutional ideals.

Part V: Despite Issues, Confucius Institutes Should Remain

The popular saying goes: "keep your friends close, but keep your enemies closer." There are more reasons than that for allowing CIs to remain and continue operating in the US. Despite three constitutional and cultural areas of conflict between CIs and American culture – propaganda, academic freedom, and hiring discrimination – CIs have a lot to offer as educational programs. They are popular, and can be an important mechanism for cultural exchange between

⁹⁸ See *Lawyer says Confucius Institutes Should Follow hiring Practices of Host Countries*, *supra* note 70, (mentioning the Chinese government's persecution of the Fulan Gong since 1999).

the US and China. But CIs still have problems that must be addressed. As a result of the benefits that CIs have they should be helped and eased through the process to adapt to US cultural and constitutional norms while continuing to follow their own constitution. This effort should be conducted in part by the schools and universities where CIs and Confucius Classrooms are set up, and in part by the US government in its relations with China and the standards that are expected of China and its agents.

CIs and their mission of educating other populations is not unique to China. Other countries have used similar methods and found success. This paper previously mentioned the Goethe Institutes and the Alliance Francaise, but the US itself is involved in similar activities. The Fulbright Program has been popular with increased academic connections between the US and other countries.⁹⁹ This program has enabled over 70,000 Americans to travel internationally and over 125,000 foreign nationals to visit and study in the United States.¹⁰⁰ This kind of program is not just used by China, but is popular around the world and used by a variety of countries.

Cross-cultural experiences can be beneficial and meaningful interactions. They are encouraged at all levels of education, from study abroad programs in universities,¹⁰¹ to world history and foreign languages in other grades. This is exactly the kind of experience that CIs offer.¹⁰² While there are opportunities around the world to learn about different cultures, Chinese

⁹⁹ Anderson, Jane L., *Fulbright Program Reminds us of the Good Government can do for the Nation*, *World*. *Dayton Daily News*, Mar 10, 1995 (calling the Fulbright program “one of the government's most successful programs.”).

¹⁰⁰ Rosenberg, Martin. *The U.S. Could use Fulbright's Vision Cultural Exchanges can Lead to Tolerance and Promote the Wealth of Nations*, *Kansas City Star*, Feb 19, 1995.

¹⁰¹ See *Weighing the Benefits of Studying Abroad*. Washington, D.C., United States, Washington, D.C.: National Public Radio, 2012, <http://search.proquest.com/docview/1032803228?accountid=13793> (accessed March 21, 2013) (discussing the benefits of study abroad experiences).

¹⁰² See Zhao and Huang, *supra* note 37, at 129, (stating that “the chief end of the CI, however, is, for non-Chinese in other countries to have the opportunity to be educated in the use of the Chinese language, and about Chinese culture.”).

culture is especially interesting to westerners.¹⁰³ As a result, CIs are popular in the US. This popularity and the demand for CIs caused by the attractiveness of Chinese culture and history demonstrates how many Americans believe that cross-cultural exchange can be beneficial.

The demand for CIs continues to grow, with more than fifty more countries around the world requesting that CIs be established there.¹⁰⁴ The effort to create and sustain CIs across the world has caused China to spend considerable amounts of money on teachers, materials, and additional funding for the universities.¹⁰⁵ As a result of the opportunities that CIs provide, they have proved very popular, which has resulted in a scarcity of resources. Expenditures have been growing due to the meteoric rise in the number of CIs around the world and are now causing a shortage of money.¹⁰⁶ China “cannot meet the demand of the world” with regards to the building of CIs, especially if it wants to maintain quality.¹⁰⁷ It should be mentioned that the Chinese government is not lacking in funds, so any shortfall in the ability of Hanban to fund CIs around the globe does not necessarily indicate a lack of funding for that organization, but more likely a lack of interest in the project from the higher ups in the CCP.

Even if universities in the US were going to establish CIs, because of rising budgetary constraints due to the popularity it could become more difficult or at least less financially beneficial in the future. Universities that want or need the funds would be advised to establish a CI sooner rather than later in order to secure the opportunity for their students to engage in this cross-cultural experience. Of course, China could just simply pull the funding for CIs without warning and the university would be left with nothing. Presumably, however, given the working

¹⁰³ See Wang, *supra* note 30, at 261-62 (discussing westerner interest in China despite paradoxes); Mattis, *supra* note 55 (discussing China’s rich cultural heritage).

¹⁰⁴ Confucius Institute/Classroom, *supra* note 24.

¹⁰⁵ See Paradise, *supra* note 5, at 653.

¹⁰⁶ *Id.*

¹⁰⁷ Wang, *supra* note 30, at 265.

and constant relationships that have been established, it appears to be a safe bet that they will continue. But is this something that universities should be engaged in? Conditionally, yes. Universities should examine the pros and cons of accepting funds from CIs and having them on campus and then should accept the enticing opportunity that CIs represent.

This paper posits that the solution to these problems is maintenance and guidance. Guidance through the process of setting up a CI in accordance with US laws and norms, maintenance for running a CI to avoid potential conflict areas and to use sensitivity when issues arise, and guidance again when a conflict arises and needs to be dealt with. The goal of this plan is to tip the balance test that universities might be making in favor of allowing CIs.

This begs the question of who should do this and who should pay for what needs to be done. What is being proposed here is not an expensive program. Consequently, the issue of funding can be taken care of by the party – either the government or the university – as it acts within a relatively normal capacity. This paper argues that the US government and individual universities or schools should make the efforts as they work with CIs. Even though the US government does not work with CIs as such, it is involved in the visa application and approval process, and can have a major impact on CIs. It is in the interests of all parties to keep CIs running, to avoid large conflicts, and to minimize disturbances as they emerge. The US government should want stronger diplomatic ties with China and to avoid major confrontations. Additionally, the US government would appreciate the benefit of a population with more cultural ties and appreciation for a major trade partner. Universities want the funds that CIs offer but want to avoid the liability they can bring and the conflicts that can be created in the community – either negative press from seeming like a communist puppet, or civil liability under a lawsuit for employment discrimination.

The first recommendation for the US government and schools/universities is that they should guide CIs through the process of starting and establishing a CI. The US government should make the potential issue areas clear through the process and the visa process for Chinese teachers. Universities and schools should be alert for anything that might violate a cultural or constitutional norm. Additionally, they should make sure that none are violated as CIs or Confucius Classrooms are established. This can help discourage employment discrimination when workers are hired for positions in CIs and also help issues of propaganda when accusations are raised when CIs are built. The support of the US government and the university will help ease the transition into the local community. When the American partners work with CIs, they can be guided through the potentially difficult time instead of merely being a victim.

Setting up CIs is only the first step. Consequently, maintenance is the second recommendation. Schools and universities should be alert as CIs continue operations, since this is the time when issues about the limiting of academic freedom are most likely to be raised. If CIs and Confucius Classrooms have a basic understanding of what is expected of them, and schools and universities have a plan in place, when a potential issue is raised it does not have to spiral into a larger confrontation. Knowledge of the issues and reasonable expectations would make problem management easier and more efficient. The US government should similarly keep an eye on CIs. This goes hand in hand with the work that they already do regarding visa regulation, a process already done regularly in checking on CIs.¹⁰⁸ If the government can also be cognizant of the main issue areas during this process, the government can help enforce freedom of speech issues and regulate hiring discrimination problems.

The mechanism for the governmental level of maintenance should be an advisory board with representatives from the Departments of State, the Department of Education, with experts

¹⁰⁸ Chin, *supra* note 64 (noting the US government's role in the Visa process).

on China. The board would review reports from universities and schools that have CIs. The advisory board would create a report with suggestions about how schools and universities can react to problems based on the information collected. This board would also be able to report a problem to higher-ranking officials in the US government when the issue requires direct intervention by the US government.

Representatives from the universities and schools should periodically report to this advisory body about their CIs and Confucius Classrooms. The head of the language department or the faculty advisor for the CI/Confucius Classroom would have one more report to fill out. This would not be a big time or expense commitment, and it would provide the governmental advisory board a wide amount of information with which to analyze and learn about CIs and Confucius Classrooms across the country. The representative from the university and school would also submit a copy of this report to the head of their institutions so there would be additional levels of oversight.

A university that has implemented a similar plan to what this paper advises is the University of Indiana, Urbana campus.¹⁰⁹ After talking to colleagues at universities with CIs and determining that there was the evidence to back up claims of espionage, the university senate voted to allow the establishment of a CI.¹¹⁰ The senate also set up a review mechanism, where after five years the CI will undergo a review by the General University Policy Committee. The review will consider issues of academic freedom and governance and decide if the CI should continue its presence on campus or not.¹¹¹ This paper recommends a similar maintenance structure where reports are periodically made and reviewed. A simple review function does not

¹⁰⁹ Julie Wurth, *UI Proposing China-Funded 'Confucius Institute' on Campus*, *The News-Gazette* (Feb. 6, 2013, 10:00 AM), <http://www.news-gazette.com/news/education/2013-02-06/ui-proposing-china-funded-confucius-institute-campus.html> (describing a review system similar to the one established in this paper).

¹¹⁰ *Id.*

¹¹¹ *Id.*

have a high cost, only requiring minimal oversight. It is not arduous and can have beneficial ramifications.

The final recommendation that this paper gives is that guidance should continue beyond the initial period when CIs are created. As a result of the prevalence and importance of the problem areas in the American psyche, the problems that this paper describes are not going to disappear instantly. In order to mitigate the damage that could occur through the problem areas, schools, universities, and the government should continue working with CIs. This paper recommends that the American parties work with CIs to guide them through the process when issues arise, instead of merely criticizing CIs. This should be the strategy whether it involves the handling of a delicate situation of foreign relations – academic freedom being curtailed because of sensitivity concerns – or litigation – a civil rights suit for hiring discrimination.

The government, for its part in guiding CIs during a conflict, should not put undue pressure on CIs by criticizing them or by enacting sweeping legislation when an issue emerges. While sweeping legislation has not been specifically threatened, heavy-handed responses have occurred involving visa renewals.¹¹² Universities should also act as partners during troubling situations and accept some potential liability for mistakes and problems. With guidance and assistance from American partners, CIs will be better situated to effectively deal with problems.

It is of note that this paper's position about maintenance and guidance has some support in the discourse surrounding CIs.¹¹³ An active maintenance and guidance is not generally suggested in the literature. An active maintenance would be something similar to constant and vigilant oversight of a project. Comparatively, passive maintenance is simply paying attention

¹¹² See Chin, *supra* note 64 (discussing the issuance of a directive regarding the visas of teachers at CIs and Confucius Classrooms by the US government).

¹¹³ See e.g. Basu, *supra* note 55 (recommending that CIs be kept under “careful scrutiny.”).

when a problem occurs. A passive maintenance is more commonly encouraged to protect the US against the potential threat that CIs represent.¹¹⁴

A downside to this paper's recommendations is that they seem paternalistic and do not seem to demand any change or progress from CIs. This paper could be construed as advocating allowing CIs to continue their behavior and forcing the American institutions to bend and compromise. This however, is not the case. CIs are called to act in accordance with local laws and customs,¹¹⁵ but at the moment they are having a difficult time meeting that obligation. In order to assist them in fulfilling a preexisting constitutional mandate, this paper recommends that the US partners lend a helping hand with the understanding that the issue areas are constitutional and cultural, and therefore are difficult and complex societal issues. Instead of doing nothing, this paper advances the idea that CIs should follow their own mandates, but that they need help doing so. It is of note that this paper's recommendations are not based in wanting to protect the US, but instead to ensure the protection of CIs and the benefits that they bring. This means that the solutions offered are not simply nationalistic and US-centered.

Part VI: Conclusion

Confucius Institutes can enable cross-cultural experiences and are a valuable tool for education in the Chinese language. Unfortunately, problems arise in three different US constitutional areas. There are issues regarding accusations of propaganda. There are conflicts around the restriction of academic freedom. Finally, there are issues of hiring discrimination. Each of these issue areas is a part of the constitutional and cultural landscape of the US, so when CIs run into trouble in these areas it can be especially problematic. It is further complicated by

¹¹⁴ See e.g. Basu, *supra* 55, but see Wurth, *supra* note 108.

¹¹⁵ Constitution and By-laws of the Confucius Institutes, *supra* note 10.

the fact that the conflicts in these areas are because CIs are attempting to faithfully follow their own constitutions.

Because of these important benefits that CIs offer, and the danger of problem areas, this paper recommends that their partner schools and universities, and the US government, offer guidance and maintenance. Specifically, guidance through the creation state and when conflicts emerge, and maintenance of the day-to-day operations. This would create a more productive partnership between CIs and the US, and would keep the benefits while helping to avoid and mitigate problems than can arise.