

Arbitrary detention in China: The case of Yang Hengjun

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Australian Ambassador Graham Fletcher, denied observer entry to the closed court hearing of the case against Australian citizen Yang Hengjun, told the press on 27 May that the case was one of arbitrary detention. This was not an off-the-cuff remark or an attempt to further damage relations with China. Although a statement of fact, it is open to misinterpretation because people have forgotten the history of arbitrary detention in recent decades. This is not the first time that a foreigner has been detained or imprisoned in China. What is different is that in the past people could be rescued by high level intervention. Unfortunately, the deep freeze between Canberra and Beijing means that there is now little Australia can do to help Yang.

In the early 1960s, as a graduate student at the University of Hong Kong, I met Henri Vetch, the Publisher of the University Press. Vetch had been the proprietor of the Librairie Francaise in Beijing before 1949. He remained in China during and after the Japanese War but was arrested in 1951, charged with conspiring to murder Mao Zedong and given a ten year prison sentence.

Vetch told me that he secured his release after three years, because he wrote (in Chinese) to Chairman Mao, telling him that the prisoners' forced labour, the construction of matchboxes, was inefficient, costly and time-consuming. He proposed technical improvements that he said would greatly improve the process. He was told later that his letter impressed Mao so much that he ordered his release and deportation. Indeed only the Chairman could decide his fate.

In the early years of the Communist government, laws were still being codified and there was no legal system. According to Vetch's biographer Keith Stevens, half the foreign population of Beijing was arrested, detained or expelled. The aim was to teach Chinese people that foreigners were dangerous. There was no way to appeal government decisions. Foreign governments could not intervene on behalf of their citizens. The state constitution, established in 1954, protected people from arbitrary arrest and gave the right to a public trial, but these

protections were not observed during successive political campaigns of the 50s and the whole legal system was abolished during the Cultural Revolution (1966-76).

Toward the end of this period of chaos, I was marginally involved in another case of arbitrary detention in China. I had worked for the writer and publisher Francis James before I went overseas, and I renewed my acquaintance with him after my return to Sydney. James had campaigned against Australian involvement in the Vietnam War and advocated regularizing relations with China through editorials in his weekly *The Anglican*.

His son Stephen told me about his father's two visits to China in 1969 and his disappearance in that country. Later James himself said that he had been travelling on a false passport, had entered China without a visa, and had visited nuclear facilities in far west Xinjiang. In spite of his pro-China views, these would have been sufficient reason for Chinese authorities to conclude that he was a spy and so detain him. On the other hand, James was quite capable of gilding the lily in his accounts of his derring-do, as attested by Gregory Clark, the first Australian journalist to interview him after his release.

Before recognition of the PRC in December 1972, there were no channels for official contacts or for government representations on behalf of consular cases. It was only in January 1973 that Prime Minister Gough Whitlam was able to intervene on James' behalf.

A new Chinese constitution was enacted in 1975 enshrining "Socialist legality" that permitted citizen arrests and trials by police. Foreigners at that time needed to be careful when out and about. While working in the Australian Embassy from 1975-78, I saw local people being arrested and accused of counter-revolutionary activities. I myself was detained on one occasion when a walk in the hills near Beijing led close to what was apparently a military area.

Although China had rejoined the United Nations and thus accepted the Universal Declaration of Human Rights in 1971, it was not an active participant during this Cultural Revolution period. It was only after Mao's death in 1976 that there were significant reforms of the national legal system and more engagement with international human rights bodies. China's 1982 Constitution set out the rights and duties of citizens including protection from illegal arrest or detention.

In 1998 China signed the International Covenant on Civil and Political Rights (ICCPR). Arbitrary detention is prohibited in Article 9 of the Universal Declaration and also under the ICCPR. Each country's interpretation is certainly subject to

national and cultural criteria, but, setting this aside, it is still fair to say that compared with the days of Vetch or James, by the 1990s China had a more robust legal system and greatly improved human rights.

How then can we explain the arrest of Australian citizen Yang Hengjun and his being charged with espionage? A statement by Foreign Minister Marise Payne noted that Chinese authorities had not provided any explanation or evidence despite “repeated requests by Australian officials,” and that he “has had no access to his family, and limited, delayed access to his legal representation.” Yang had become famous online with blog posts that showed familiarity with the inner workings of Chinese government offices. This may have caused embarrassment in China.

In recent years he was resident in New York and supported himself largely through involvement in semi-legal daigou activities (purchasing foreign goods on behalf of customers in China). The last blog post by Yang that I read was a reflection on the socially disruptive behaviour of mainland Chinese tourists and residents in New York – not exactly a security issue. One commentator has observed that the most likely explanation for Yang’s arrest is with a view to securing the release of prominent Chinese businesswoman Meng Wanzhou, Chief Financial Officer of Huawei, who has been indicted by the US Justice Department for theft of trade secrets. Such a deal would have to be negotiated through high-level contacts between Washington and Beijing.

This right to liberty and security of person is a universal right. Those who wish to criticize China should admit that is not the only place where abuses occur. Australia grossly violated this right in May this year when it passed a law allowing indefinite detention of refugees.

Or the secret trial of Bernard Collaery and Witness K in Canberra!

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