An Innocent Almost Felon Abroad

Christopher Balding

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My one run in with the law in China proved as anti-climactic as possible. It left all parties, except myself, with a profound sense of disappointment.

To avoid the distractions of meetings, administration, and unexpected drop ins, I preferred working from home on days I did not teach. Given the propensity for all faculty at the university to do the same, I felt no qualms about frequently working from home. My home office with a beautiful view from the 21st floor across into the well-known High-Tech Park which housed bellwethers such as Tencent and Alibaba made for a pleasant distraction free work environment.

At the time, two of my children went to a Chinese kindergarten in the morning and spent the afternoons at home and learning more Chinese with the ayi. Living on the 21st floor, in the spring and fall, we kept the large bay windows lined with vertical wiring open to catch the cross breeze of our north-south facing apartment as the wind rushed into the South China Sea. Coupled with noise cancelling headphones and a late afternoon bourbon or imported beer, it made for quite the enjoyable distraction free working environment.

One afternoon my wife knocked on the locked door asking me to come out and deal with a situation. Walking out I expected to hear tales of fighting children or some household chore that needed attention. Greeting me instead, I saw my four year old daughter standing sheepishly in the living room near our building security guard talking to our ayi in Chinese. Surprised at the scene, I inquired about what happened to cause this level of scrutiny.

The complex security guard knocked on our door after reports of two softback pocket size Chinese English dictionaries were reported being catapulted into the parking lot below from a high rise apartment. Ever the inquisitive little imp, my daughter enjoyed conducting her own “experiments” which today consisted of testing the theory of gravity with a book from the 21st floor. As the only white poet warlords in the building and one of the few apartments with daytime occupants, it took little time for the security guard to solve the case of the Dubious Dictionary.

Through a mix of Google Translate, an ayi who worked with us for years, and native level Handarin we gleaned that the security guard wanted us to come and see the car where the two dictionaries landed and compensate the owner. Wanting to get back to work and put this little snafu behind me, I grabbed my wallet, motioned for the ayi to come with me, and followed the security guard downstairs.

Our apartment overlooked a narrow outdoor parking area with one row of cars, though the rotating brightly colored Bentley’s or Rolls Royce on the end always puzzled me. A mixture of residents and workers who occupied the first floor with a bodega, hotel, and a bank. When the security guard pointed out the car where the dictionary landed, initially I failed to understand what he meant because a passerby would fail to see the supposed damage unless squinting through Coke bottles. As my ayi of many years assured the security guard she could reform my ne’er do well capitalist roading ways, I took pictures of the visually invisible damage and began obtaining quotes from autobody shops through helpful friends and colleagues.

A few minutes later the owner of the car came out from the bank where he worked. Gesticulating wildly to the security guard, he refused to accept my sincere penance. Gathering from my keen reading of body language, hand signals, and Google translate with my ayi, I believe he accused me of trying to overthrow the Chinese Communist Party, declaring Taiwan independent, and attempting to restart the Opium Wars due to the pain medication he would likely need. I began to doubt that...
the 600 RMB in my wallet, about the cost to repair the barely noticeable ding, probably would satisfy this automotive nationalist.

My loyal ayi, who worked with us for six of our nine years in China, helped teach my children Chinese and would scold me over my love of the “devils brew” cold water stepped in to try and help navigate this situation. The security guard who grasped the dynamics of the situation and my willingness to rectify the mistake of a four year old conducting gravitational experiments in urban China, stood with me off to the side hoping our ayi could smooth the rising nationalist indignation. A gentle but firm woman who spoke Mandarin, Cantonese, and Hakka as well as some dialects, she moved effortlessly between Chinese and western cultures giggling over the crazy food Americans ate....like brownies. She seemed the perfect candidate to help ease tensions and put this behind us.

As the security guard and I stood off the side with knowing smiles expecting her to smooth things over, voices began to rise. A woman I never saw raise her voice before became increasingly agitated with her belligerent interrogator. Rather than talking things out in a gentle but firm way as I had seen her do with my children so many times before, as he stepped forward raising his voice she stepped forward raising hers a few decibels above his, repeated until they stood toe to toe, nose to nose with spittle flying everywhere. At first dumbfounded and unable to move at the scene unfolding before me, I realized I needed to step between the prize fighters before I got hauled into prison for my ayi clocking some hot head who refused to accept money to repair the almost unnoticeable damage to his car.

At that moment the police with lights and sirens blaring pulled up. Relieved that I could allow Chinese policemen to intervene between two Chinese screaming at each other face to face, I stepped back and allowed them to separate the combatants. Pulling them aside, the police gathered information to assess the situation and I felt some relief sweep over as I saw a potential resolution in sight. After a few minutes talking to my ayi and the car owner one police officer motioned me over to where he stood next to this patrol car. With everyone talking calmly in separate corners I believed I could see an end in sight. Walking over he opened the back seat door of his patrol car and motioned for me to get in. I stood there for a moment unsure if he intended to detain me for such an absurd event. Motioning again I opted not to argue with the man and got in. Driving away after waving to my ayi, I contemplated the absurdity of being detained by Chinese police for the first time because my four year old daughter tossed a small soft back Chinese English dictionary out the window. At least now I could get those prison tats I always threatened my wife with.

After a brief drive we pulled up in front of a low slung building surrounded by high rise office and residential towers. Nondescript by outward appearance, one of the police officers assigned to guard the hardened foreigner in mesh basketball shorts and flip flops opened the door and motioned for me to follow him. The lower level building separated into two wings with one being the primary public area with a glass encased administration desk and the other a long row of rooms with signs in Chinese and English that said “Negotiation Room #1” and so on. The officer called over a superior dressed in more formal civilian attire rather than the standard issue blue uniform and after talking for a minute escorted me to Negotiation Room #1. Following shortly, the well dressed senior official entered Negotiation Room #1 excited by the prospect of interrogating or beating a foreigner as I still did not understand exactly what was happening. From his demeanor however, he clearly expected that any case involving a white foreign probably involved sex, drugs, rock n roll, or guns. A promotion undoubtedly loomed.
We just sat there for a few minutes with me initially unsure as to do until realizing we probably awaited the other litigant as he giddily prepared for the case of a lifetime with DNA tests and dramatic statement about how I’m out of order. The car owner finally arrived and for some reason changed clothes, something that strikes me as odd to this day. After rising at his arrival, we all sat down to try and resolve this serious matter with a guard stationed just outside the door in case mayhem broke out.

The senior official took out a notebook anxious to hear about the bar room brawl I instigated or the drug running operation I ran out of my English teaching front. The car owner began to recount his tale of woe and my dastardly attempt to assassinate him as he calmly worked inside the bank. Sitting their focused on reading the body language after years of training, I almost laughed audibly when I saw the senior officer put down his pen as his face changed instantaneously from boisterous Dirty Harry to dejected resignation asking himself whether his work means anything on this big blue marble.

At this point however, the car owner began to speak English about the situation. Living in Asia and interacting with people from all over the world and levels of English ability, one develops the ability to quickly ascertain how well a counterpart speaks English. One type of non-native English speaker bedevils native English speakers most. There is the non-native English speaker who can speak initially with high quality vocabulary and syntax with minimal low accent leading the English speaker to believe they grasp the language. Only upon engaging them in conversation do native English speakers discover the folly of their assumption based upon ongoing blank stares and nonsensical replies do we discover their poor grasp of the English language. Not trained as a linguist, I do not know what causes this specific type of speaker or even exactly how to classify their grasp of a foreign language but they do exist.

Initially confused why we did not speak English from the outset and seeing a channel to potentially defuse the situation, I complemented him on his English and reassured him of my intent to pay for any damage done to his car plus a little extra for the inconvenience.

This appeared to only inflame his nationalist indignation even further. He spoke of the potential grievous bodily harm or death that would befall any well meaning Chinese citizen walking peacefully in a tree lined parking lot when 4 ounces of softback terror comes hurtling at them from twenty one stories up at the hands of a serial killer four year old bent on genocidal destruction of the Han people. Believing discretion the better part of valor, I just sat there sympathizing with the mortal danger passerbys faced from an errant Lego. The police official overseeing this negotiation, as the car owner switched between English and Chinese, seemed to veer between serious amusement and embarrassment questioning his life choices that brought him to the height of these diplomatic negotiations.

Sensing a lack of traction in his arguments, he opted to up the ante to try and squeeze me for thousands of dollars to pay for the psychological trauma of a nearly invisible ding on the hood of a three year old Toyota. He leaned forward in his hard metal chair, elbows propped on the table between us, and pounding on the table intimidatingly bellowed “WHAT ABOUT THE PROSTITUTE S?”

In that split second as he glared across the table at me, I successfully restrained myself from laughing at what he said still hoping for a simple resolution. Now however, I was confused. Though I heard stories about corruption in Chinese law enforcement, his brazenness surprised me.
especially with an officer sitting right there. Did I need to go get them and bring them to them to the police station? I knew of one neighborhood where migrants and foreigners went for such services but knew nothing about which buildings I needed to frequent.

Hoping to avoid further entanglement I devised a clever strategy. “Well, I can give you some extra money to pay for that, but as a foreigner, I’m not sure where or what to do. So what you do with the money after I give it to you, is your business.”

Clearly unhappy with my answer, he leaned back in his chair before coming back with his fists on the table. “Your book landed on my car. I could call the government and prostitute you!” he growled shaking his finger at me.

I tried to process his threat thinking the Chinese government does an admirable job of prostituting many notable foreigners before realizing he fooled me with his English capability. He did not mean prostitute but rather prosecute. It took every ounce of restraint to keep from laughing in his face knowing that would only exacerbate the situation. I nodded my head trying to convey I understood the gravity of this non-sensical mountain of what would could be consider an ant hill only with extreme generosity.

Though doubting I faced any real legal threat from this situation, still I wanted it to disappear much quicker than currently happening. Thanking him for his mercy, I wondered what I could do to make this situation vanish taking a call from a friend with an estimate on the repair.

During this time, the officer in between table pounding tirades by the car owner and questioning his own life choices, used his limited English and my limited Chinese with interjections from friends and colleagues who called to gauge my amenability to settling. Though unable to communicate well, my sense indicated he realized my reasonableness to putting this behind us even as he witnessed my counterpart throw temper tantrums accusing me of attempting to overthrow the Chinese Communist Party.

At one point, exhausted from his unceasing rants, the car owner stepped out of the room to smoke a cigarette. The officer peeked outside as the car owner smoked his cigarette under the no smoking sign, then came back and wrote a number on a slip of paper signifying how much he thought I should pay for the damage. It was effectively the amount I told him I would pay for the ding that passerbys only noticed when stopping and examining under the proper light. I began to take out my wallet to try and pay but he motioned for me to put it back in my pocket. Just then then the car owner entered the room.

History seemed to replay itself. The officer seeing the sheer banality of this event laid out what the car owner should accept as recompense for the damages. The car owner seeing dollar signs argued for reparations for all the art that left China since the Tang dynasty insisted I owed him thousands if not hundreds of thousands or potentially billions of dollars. Their voices began to rise. The car owner became increasingly incensed gesturing angrily in my direction. The officer however, refused to back down pointing to the pictures on a cell camera and raising his voice matching the indignation slight for slight.

All of a sudden the officer made the universal gesture for money pointing at the number I agreed to. I pulled it out of my wallet and laid it down on the table. He then motioned for me to leave. I exited the non-descript interrogation negotiation room and scurried back to my apartment thankful for my release.
Of all the things I ever did in China or feared would bring me into contact with law enforcement, this sequence of events would never make my list. As nonsensical as the whole situation appeared to me as someone with no Chinese legal expertise, I came to find out that my entire experience followed a well worn path for the resolution of many disputes.

A few weeks later over beers with a lawyer colleague, I recounted my tale of hysterical woe. He informed me that in reality, much of Chinese dispute resolution from neighborhood quarrels all the way through to significant civil and criminal litigation follow a similar pattern with open conflict avoided. According to him, recompense for damages all the way through to incidents involving death can allow people to avoid jail time. What I first thought a mistranslation, Negotiation Rooms existed to serve that purpose where every dispute from noise complaints to many business disputes to many acts that would qualify as felonies resolved themselves with official help in a Negotiation Room. In China as a foreigner, you become so used to being treated differently, both good and bad, that it surprises you to find out your experience is just like everyone else's.

We see this almost informal system of law enforcement play out in a variety of ways. Most obviously we see it in the data. Officially, the Chinese prison population of 500,000 smaller than the United States, China maintains an incarceration rate per ten thousand people in the bottom third globally. We see a similar dynamic in business matters. Though bankruptcy filings have been rising in China, especially with the passage of a new bankruptcy law, filings remain astoundingly low. For the 12 months preceding March 31, 2018, the United States reported 23,106 corporate bankruptcies while China with a similar sized economy reported only 10,195 in 2017. If we adjust this for population, the United States had one bankruptcy for every 14,282 while China recorded one bankruptcy for every 137,322. Put another way, the population adjust bankruptcy rate in China is nearly ten times less that what is in the United States.

Well meaning comparisons of headline data like prison population and bankruptcy filings are useful, but absent the underlying framework motivating those numbers such as what type of dispute settlement mechanisms exist within countries, they can also cause profound misreading of the data.

Language evolves to grapple with the reality of what people experience. My lawyer colleague relayed that the most common word Chinese use when discussing people who have been jailed or arrested is a word from Chinese that roughly translates as “unlucky”. Divorced from any relationship to mechanical or cosmic justice, citizenry view the application of law and order as methodical as a lightning strike. The gods with no reason or understanding comprehensible to the mortals reach down and exact their justice.

I witnessed this first hand when any discussion of situations about right, wrong, justice, and discipline arose in China. One of discordant aspects to the American mind, rarely did anyone defend the actions of the accused. Accustomed to debates about the guilt or innocence of those in the legal system and the intricacies of the case, in China most everyone assumed guilt. Whether in cases of office transgressions or publicized arrests, the public defaulted to assumption of guilt. At first, I assumed a lack of the American legal concept guilty until proven innocent or potentially the strong hand of the state which wins nearly 100% of cases. However, the innate skepticism among those even knowledgeable with western jurisprudence convinced me some hidden variable remained undiscovered.
Chinese, in my opinion, hold a dark Dostoyevskian view of the world with man tainted by sin. The lack of social trust drives an enormous range of phenomenon from storing up money abroad by those with means to preferring a range of foreign consumer products. The narrow limit of trust drives most to view fellow man with deep suspicion convinced they engage in nefarious behavior for which they deserve the eternal damnation wrought by the state.

As I lived and experienced the cynicism of Chinese towards human nature and man, I began to understand what I believe explains the both the cool detachment and belief in guilt before innocence. When conversations would turn to events of guilt, innocence, and punishment in China, one can expect a resigned shrug and commentary about how they probably did what the government said and even if not the charged crime then a multitude of other sins. Chinese default to belief in guilt from their belief in original sin with Chinese characteristics. Whatever happens to the accused, like sinners in the hand of an angry Party god, we must answer for our crimes. Even if innocent in most aspects of our life, the omnipotent state can find crimes. Guilt even if not discretely attached to specific accused acts, covered a life of sin which demanded punishment.

Almost equally puzzling, when pressed, Chinese rarely mention any concept of justice. As an American, I found myself thinking of justice in two distinct but related ways. Americans tend to think of justice as being comprised of both what I will term cosmic justice as to whether a person committed the exact crimes they are accused of and whether proper procedures of justice were carried out in proving the accused guilty. The more I thought about how we conceive of justice the more I realized the complexity and implications upon how we as Americans generally think of justice.

Though we may not readily admit it, cosmic and procedural justice frequently conflict in their objectives. To this day, many consider the criminal conviction of Al Capone for tax evasion as almost illegitimate due as it avoided any consideration of what everyone believed his real crimes for which the government could not bring a case. In other words, while the procedure was followed it avoided the question of his alleged real crimes to secure a conviction. This raises questions which many will ask if similar tactics could be used in other areas to intimidate potential defendants when the real crime cannot be proven or a conviction secured so they are charged with other crimes.

There are other instances where it is widely accepted that a defendant committed the crime but for a variety of reasons, they may not be convicted. In one of the most famous cases in modern American justice, OJ Simpson was found not guilty even though it is widely believed he committed the crime. Even if many people believe he committed the crime, the procedure did not produce a guilty verdict creating a sense of conflict between the cosmic and procedural justice.

The reality of negotiated settlements plays out with both positives and negatives. Positively, many disputes both of the civil and potentially criminal variety, are solved through arbitrated settlements. Coming from the much more litigious American legal system, I find that there are many things to appreciate about this type of system which reduces barriers to solving disputes. Though not a lawyer, I sense, and believe the legal establishment would agree, the US system should build an improved system to manage lower level disputes through some type of managed negotiation or arbitrated system rather than forcing everything into a more formal system.

In the United States where even small suspected infractions or disputes are treated harshly or made difficult to manage through rigid formalized legal system, there is something to be said for managed negotiations. Various types of legal fees now pose a very real hurdle for many litigants where even
small issues become major problems for businesses and individuals. This leads to the very real belief that those with means, whether individuals or companies, live in a different justice system than the poor. The problem of civil asset forfeiture in the United States is considered a problem that needs correction by a wide variety of people for its procedural problems and not specifically the cosmic justice which typically hits the poor more than the wealthy.

There are however very negative consequences to purely negotiated settlements. These most typically appear in more complex cases or when there are significant power differentials between the litigants. If a small paperback dictionary is dropped on a car, a negotiated settlement works fine. In more complex cases even where litigation options exist, many of the cases are pushed into negotiated settlements. Power in the legal system is everything. There is no law, only who is the more important party.

What I have covered here, became all the more apparent with the arrest of Huawei CFO and now two Canadians in China after Beijing threatened Canada. First, given the Chinese conception of arrest as “unlucky” and random events from the gods, we can understand the bewilderment and outrage. The United States does not have the heaven bestowed right to hold Chinese lives in their hands. It is perceived as political intrigue meant to challenge China and nothing else. Second, because law in China comes from the political strength or whims of the Party, Chinese simply do not grasp that President Trump or Trudeau did not order or even know about the arrest and was conducted by career civil servants and law enforcement far removed from politics. A judiciary that is independent in any way simply does not register. Propaganda talks about everything, judiciary and law enforcement included, serving the Party and the Core. In reality, for President Trump the arrest came at a very inopportune time and all reports are that he did not know about the arrest at dinner with Secretary Xi.

Third, looking at the Canadian arrests, we see both an acceptance of the randomness and of the sense, it almost does not matter if he did what he may be accused of because there are certainly other things he could be accused of. Fourth, there is a full acceptance of the arrests not in the light of whether laws were broken and whether independent law enforcement prosecute the cases, but as seen between the might of the parties. It is notable that China has not, so far that we know of, retaliated against the United States or its citizens but instead chosen to retaliate against Canada. The entire arrest is seen as a battle of strength.

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1 The remainder was written to help people understand why Chinese are reacting to events the way they are.